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COMBATING FRAUDS AGAINST THE ELDERLY

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UNITED STATES SENATE

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COMBATING FRAUDS AGAINST THE ELDERLY

TUESDAY, MARCH 1, 1983

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met pursuant to notice, at 9:07 a.m., in room 538, Dirksen Senate Office Building, Hon. John Heinz, chairman, presiding.

Present: Senators Heinz, Cohen, Melcher, and Pryor.

Also present: John C. Rother, staff director and chief counsel; Bill Halamandaris, director of oversight; David Holton, chief investigator; Kate Clarke, communications director; Robin L. Kropf, chief clerk; Linda Goldman, staff assistant; and Eugene Cummings, printing assistant.

OPENING STATEMENT BY SENATOR JOHN HEINZ, CHAIRMAN

Chairman HEINZ. Ladies and gentlemen, we are having a little trouble with our sound system, but in the interest of time, I think we will proceed anyway.

In 1981, the Senate Committee on Aging held a field hearing in my home State of Pennsylvania to review the local impact of consumer frauds on the elderly. The hearing revealed that such frauds were indeed a significant problem with potentially enormous implications for the elderly.

In order to determine the dimensions of this problem, the committee recently conducted a national survey of responsible State and local officials. Over 1,300 questionnaires were mailed to police chiefs, district attorneys, and consumer protection offices. The purpose of the questionnaire was to assess the nature and frequency of consumer and economic frauds, the impact of these frauds on the elderly, and the resources available to combat these abuses.

The committee report that I am releasing today—and I think copies of it are available to all interested people—details those findings, and in summary, concludes with the following five points.

First, consumer frauds are widespread and pervasive. They touch every aspect of the older consumer's life from health care to housing.

Second, consumer and economic frauds are increasing. Respondents report an increase of about 12 percent a year.

Third, the elderly are considered the prime target for these abuses. Over 77 percent of those responding indicated that the elderly are more often the targets of fraud than the younger population.

Fourth, those who perpetrate these crimes are well organized, sophisticated, and effective. Some respondents reported "schools for scoundrels" organized by con artists to tutor other cons in the fine art of making a "sting." Police reported it was not uncommon for cons to exchange "hit lists"—the names of those they had successfully defrauded—upon leaving one location for another.

Fifth, despite the increase in the level of fraud, resources available to combat this problem are diminishing. Federal programs funded by LEAA have been eliminated. Other Federal funds earmarked for consumer service have been lost in block grants. Thirty-five percent of State consumer offices reported reductions in funds. Forty-seven percent indicated that they had been level funded.

We also found in this survey that there are 10 frauds that one would rate as most harmful to the elderly. They are: Quackery and medical-related frauds, such as phony arthritis or cancer cures; home repair and improvement cons; bunco schemes, such as the "pigeon drop" and the "bank examiner"; insurance frauds; social cons which feed on a victim's compassion and loneliness, such as phony charity promotions; housing, land sale and rental frauds; business and investment schemes, such as work at home programs; nursing home frauds; automobile purchase and repair schemes; and deceptive funeral sales practices.

While a precise measurement of the damage done by these deceits is incalculable, it is clear that millions of people are defrauded of billions of dollars each year. The Arthritis Foundation estimates $1 billion is lost annually to phony arthritis cures alone. Over $5 billion is said to be lost to business and investment frauds, while a single land fraud may exceed $1 million.

Witnesses today will speak to these problems and present solutions. We will hear how the elderly are defrauded, and see the impact of these abuses on one of its victims. We will hear from representatives of State, local, and Federal agencies charged with preventing and controlling these abuses.

The con men who steal from the elderly take more than money. Their theft also involves dignity, security, and peace of mind. The English language is not adequate to characterize their conduct, but our laws should be adequate to stop them. To that end, I look forward to today's testimony.

Senator John Glenn, the ranking minority member of this committee, and Senator Larry Pressler cannot be with us today because of prior commitments. They have, however, submitted statements for the record, and without objection they will be inserted at this point.

[The statements of Senators Glenn and Pressler follow:]

STATEMENT OF SENATOR JOHN GLENN

Mr. Chairman, I am pleased that the Senate Special Committee on Aging is conducting this hearing to examine consumer fraud schemes and the harsh impact these crimes have on elderly citizens. Consumer fraud practices are a major part of the rampant, growing crime problem in America.

In 1981, the Aging Committee examined the national crime epidemic as it affects senior citizens in a hearing entitled "Older Americans: Fighting the Fear of Crime." We found that many elderly persons have become prisoners in their own homes due

to their fear of crime. A recent Department of Justice study revealed that three out of four elderly persons deliberately limit their activities because of a fear of crime.

However, as today's hearing will demonstrate, elderly persons are far from secure in their own homes, no matter how many dead-bolts and "burglar-bars" they have installed on their doors and windows. Even the most expensive electronic home security system will not protect an elderly person against phony insurance salesmen, home repair con artists, or bogus medical "cures" that arrive in the mailbox.

Swindlers see the elderly as easy marks for several reasons. Many older people live on social security and pensions that are supplemented by savings. They may be looking for ways to increase their incomes through investments and work-at-home opportunities. Many of these business ventures are sound and legitimate, but some are ideal settings for fraud. Many elderly persons worry about inflation and energy costs. Con artists recognize this concern and take advantage of the elderly through phony energy conservation and home insulation gimmicks. And criminals prey on the senior citizen's most prominent fear—the fear of medical catastrophe. Poor "medigap" and cancer insurance policies, unnecessary and expensive hearing aids, and worthless arthritis "cures" represent just a few of the medical frauds perpetrated against senior citizens.

Before we attempt to combat consumer frauds against the elderly, we must identify the size and scope of the problem. The Committee on Aging has conducted a national survey of State and local officials to determine the frequency of consumer frauds against the elderly, to define the impact of frauds on the lives of the elderly, and to identify resources and strategies being employed to guard against these crimes. Respondents to the committee's survey included officials of State consumer affairs offices, chiefs of police in large and small cities, district attorneys, and State attorneys general. The results of the survey indicate that consumer frauds are indeed a major problem for elderly citizens. The elderly are targeted as easy marks by con artists. Over 77 percent of the officials surveyed indicated that the elderly are more frequently defrauded than the younger population. When victimized, the elderly suffer disproportionate losses and are slower to recover—in financial, physical, and mental terms.

The committee survey revealed the following 10 most harmful frauds against the elderly:

(1) Quackery and medical-related frauds.
(2) Home repair and improvement frauds.
(3) Bunco schemes.
(4) Insurance frauds.
(5) Social frauds.
(6) Housing and land frauds.
(7) Business opportunity and investment frauds.
(8) Nursing home frauds.
(9) Automobile frauds; and
(10) Funeral frauds.

What can we do to stem this wave of consumer frauds against our elderly citizens? An effective response must unite Federal, State, and local government officials, citizen groups and neighborhood associations, business leaders, and individual senior citizens in a cooperative effort. We need to enact and strongly enforce tough crime-fighting and consumer protection laws.

I have cosponsored S. 450, the "Mail Order Consumer Protection Amendments of 1983." This bill will increase the investigatory and enforcement powers of the Postal Inspection Service to more effectively combat consumer fraud through the mails. The bill will help the Postal Service to more effectively enforce the existing laws against false advertising. Also, every State has some form of consumer protection statute. Other State laws specifically protect consumers in the areas of home repair services, home solicitation, and insurance sales.

The most important way elderly persons can protect themselves against these frauds is through consumer education and by following a few commonsense precautions. Older consumers must be aware of get-rich-quick opportunities, traveling salespersons, and telephone solicitations. Senior consumers should shop around to check prices and performance before purchasing products and services. They should check with officials before entering into any major transactions, and they should clearly understand any written contract before signing it. Most importantly, seniors should report any suspicious offers to their local law enforcement agency immediately.

As the ranking minority member of the Senate Special Committee on Aging, I am pleased to join with other committee members in releasing a report entitled "Consumer Frauds and Elderly Persons: A Growing Problem." This information paper

explains the results of the committee survey, gives tips on how to combat frauds against the elderly, and includes a consumer directory of Federal, State, and local sources of help.

STATEMENT OF SENATOR LARRY PRESSLER

Mr. Chairman, I would like to thank you for organizing this hearing on this very important subject. Of all the investigative work done by this committee, the work done on elderly consumer fraud is among the most important.

Previous investigative hearings have focused on fraud in Government programs, such as medicare. I believe it is important for us to look into problems such as this. The nature of consumer fraud as an act that exploits people on a very personal level, however, makes this an extremely distressing problem.

The majority of the residents of my home State of South Dakota live in rural or small-town settings, and as a result many of them conduct a great deal of business through the mail. For this reason, they are highly susceptible to mail fraud, and I have a special interest in this particular subject.

It seems that the list of the different types of fraud that are common is almost endless. The more information we can collect and disseminate on this subject, the better prepared our people will be to avoid being victimized by perpetrators of fraud schemes. I think this is an extremely worthwhile use of our time and energy, and I look forward to the testimony of our witnesses this morning.

Chairman HEINZ. It is my understanding that our panel consisting of the five members of the Federal Trade Commission is indeed present.

Chairman Miller and the others, would you come forward?

As the members of the Federal Trade Commission take their seats, let me observe that, as I indicated in my opening comment, the committee survey has identified 10 frauds which have the most harmful impact on the elderly. Many of those frauds involve industries and market practices within the jurisdiction of the Federal Trade Commission. We are very grateful to have the Commission here with us this morning. We are delighted to have Chairman Miller, and also his four other colleagues—Commissioners Bailey, Clanton, Douglas, and Pertschuk.

We are first going to hear from Chairman Miller, who will present an overview of the Commission's activities in relation to the elderly, and then it is the Chair's intention to call upon each Commissioner to make whatever brief statement they see fit.

Once Chairman Miller has testified, and the other Commissioners have made whatever comments they want, then the committee will ask questions.

Chairman Miller, we welcome you here today. We are glad to have you and your colleagues with us. We understand you have another meeting scheduled not too long from now, and obviously, you and we want to move as expeditiously as possible.

We made a special effort, because of that meeting, to schedule you first. Normally, we schedule the people who have the responsibility of solving the problem after we have presented the problem, but in order to accommodate you, we wanted to have you all here, and we do hope you will stay long enough to answer a few questions.

So, Chairman Miller, would you please proceed?

STATEMENT OF JAMES C. MILLER III, CHAIRMAN, FEDERAL TRADE COMMISSION

Chairman MILLER. Thank you, Mr. Chairman.

We are very pleased to be here, and I thank you so much for making these special arrangements so that we can address some matters that are of significant import to the Commission, as well as to all Americans.

I would like to, for myself and on behalf of my colleagues, compliment the committee for holding these hearings and for developing the survey, which we plan to mine for all it is worth, in developing and helping to develop our approaches to these important problems.

Mr. Chairman, I have submitted a prepared statement, and with your permission, I would ask that it be inserted in the record and that I simply summarize my statement.

Chairman HEINZ. Without objection, so ordered.[1]

Chairman MILLER. Thank you, sir.

Let me just tell you briefly about the Commission's overall consumer protection program. Our focus really is on basic consumer protection, in particular, preventing fraud, insuring truthful advertising, and making businesses keep their promises.

We feel the elderly are particularly vulnerable to some of these abuses. Many of them live on fixed incomes, and many of them are not nearly as mobile as other consumers.

Three aspects of our consumer protection program, I think, deserve special mention.

First, we have increased our commitment to traditional law enforcement. For example, we recently charged four companies with outright fraud, including the largest marketer of investment diamonds. We also charged a builder of new homes with failing to live up to its warranties.

Second, we are enforcing the Commission's rules to prevent fraud. For example, we find that mail order problems are the largest source of complaints to the Commission. Scrutiny of mail order fraud is a high priority for us, and I think it is a high priority for elderly citizens.

Third, we are emphasizing consumer education directed at the elderly. For example, we have developed a project jointly with the AARP to help the elderly recognize the problems that they face and help them to deal with their problems more effectively. The projects will help them detect various kinds of frauds, including those associated with door-to-door sales. It will also help the elderly complain effectively, and direct them to contact local, State, or Federal law enforcement officials. Jointly with the AARP, we have also developed two programs on housing alternatives, including independent homes, and rest homes. We have distributed materials on generic drugs, warranties, equal credit opportunity, and other issues, to let consumers know their rights.

Now let me deal with a few specific areas that I understand are of particular interest to this committee.

First, the Commission's health care program. Mr. Chairman, as you know, the Commission has stood united in its opposition in recent years to an effort to have the Commission's authority in the health care area taken away. I think nothing is more important in our reauthorization than that the Commission retain the authority

[1] See page 7.

to look at commercial practices of medical professions and other professionals, and insure that they, too, abide by the Federal laws against fraud, deception, price-fixing, and boycotts. And I think this is of particular concern to older Americans.

Our health care program increases competition and lowers cost. For example, as a result of the AMA case physicians can now advertise that they can make housecalls, something that is very important to the elderly, and that whether they are accessible by public transportation. As a result of the American Dental Association consent, dentists can now advertise about dentures. That is very important. We have also addressed vision care. As you know, Mr. Chairman, approximately 90 percent of elderly Americans wear corrective lenses. The Commission's eyeglass rule insures that consumers can obtain a prescription so they can comparison shop for their corrective lenses. In our eyeglasses II proceeding, we are investigating the possibility that there are unnecessary restraints on competition in optometry resulting from current restrictions on the use of trade names, opening of branch offices, and limitations on where a company or a practitioner may be located. We have new investigations and new initiatives in this area, including investigations of the advertising of over-the-counter products, including those meant to deal with arthritis; the marketing of nonsurgical treatments to combat signs of aging; and the advertising of food or special diet needs.

Second, the Commission's housing and land sales programs. We are very interested in the time-sharing problem. This is a new and growing industry that has very many positive aspects. But the nature of the industry is one where there is a potential for problems. And we are currently involved in a number of investigations.

In the housing area, we are also investigating the warranty practices of two builders.

Third, we have a program to review franchises and other investment opportunities. For example, we have charged two companies with violating our franchise rule and are seeking penalties and other redress. We are investigating the sale of filing services for oil and gas lotteries. We have authorized injunctive actions against marketers of investment diamonds, as I mentioned, we are investigating sales of other hard assets and cash commodity investments.

Fourth, we have several investigations in the area of age discrimination and credit including one where we believe the companies have discouraged the elderly from seeking credit; another for allegedly applying higher standards to the elderly for the purpose of approving credit; and a third for allegedly granting credit to the elderly only on more restrictive conditions.

Now, I would hasten to add that some of the very good work of our economists and some econometric modeling has aided us in identifying companies where this kind of discrimination might exist and getting evidence on this kind of discrimination in a much more cost-effective way.

Now let me address an issue I know is controversial, and that is the funeral industry, and I will try to be brief. I think this subject deserves mention because the funeral industry is one where there may well be market imperfections, as an economist would call them. People do their purchasing under stress, and usually they

have no prior experience when they make funeral arrangements. I have always said that I think this is an appropriate industry for the Federal Trade Commission to address.

Last July the Commission approved a rule in the funeral area. I dissented from that decision and recommended a reopening of the record. I did not think there was reliable evidence about how the industry operated, or evidence on how the remedy would solve the problems, and I think it ignored some opportunities for improvements. But perhaps most importantly, I felt that the evidentiary standards that the courts would require of us were not met, and therefore, in the end, there was a keen likelihood that the Commission's effort would be overturned in the courts. Therefore, I dissented from that decision.

Now, I do share the concerns of my fellow Commissioners that this industry may need some special attention. But I think we need to act in a way that is finely tuned, that will be effective, and that will stand the test of the courts.

As you know, Mr. Chairman, the Congress vetoed the Commission's used car rule. The constitutionality of the used car rule is now before the Supreme Court of the land. Under the provisions of the FTC Improvements Act, I proposed the issuance of another used car rule after the congressional veto that would deal with the two main problems we found--first, misrepresentations by dealers about responsibilities for repair, and second, what an "as is" sale means. Therefore, I proposed a rule that would contain a warning that oral promises are hard to enforce, an explanation of an "as is" sale, identification of the major systems of an automobile, and information on warranties provided and their terms. This would all be on the sticker in the window.

In conclusion, I think the Commission has acted to address the concerns of older Americans. We bring cases against fraud and the kinds of cases that you identified in your study, Mr. Chairman. We bring cases that have benefits not only in terms of the redress to the consumers injured, but also have a deterrent value.

One thing I would like to indicate, if I might, is that we are going to be pressing for tougher penalties and more consumer redress for violations of our rules. The deterrent effect is very, very important.

We look forward Mr. Chairman, and members of the committee, to working with you in the future on these and other problems facing the elderly, and we hope to solicit your ideas. Whenever we can be of assistance to you, we will be glad to do so.

Thank you.

Chairman HEINZ. Chairman Miller, thank you very much.

[The prepared statement of Chairman Miller follows:]

PREPARED STATEMENT OF JAMES C. MILLER III

. Mr. Chairman and members of the committee, my colleagues and I appreciate this opportunity to describe some of the Federal Trade Commission's activities addressing the problems faced by our Nation's elderly consumers. We would also like to compliment the committee for holding this hearing and for its survey of areas of fraud of most concern to older Americans. The Commission will certainly make use of your data in its continued effort to allocate law enforcement resources in a cost-effective manner.

The Commission places a high priority on providing basic consumer protection—preventing fraud, insuring truthful advertising, and requiring that businesses keep their promises. This is particularly important to the elderly. They tend to be vulnerable to unlawful practices in these areas because they often live on fixed incomes, and a substantial portion of them are less mobile than other consumers.

Three aspects of the Commission's consumer protection effort deserve particular mention. First, we have increased our commitment to traditional law enforcement. For example, we have recently charged four companies with outright fraud. One case involves a marketer of investment diamonds with sales of more than $100 million annually. Another complaint accused a company that sells services in connection with oil and gas leasing of misrepresenting the value of its services. We are also suing firms that fail to honor their promises. For example, the Commission recently charged a builder of new homes not only with misrepresentations about its homes, but with failure to live up to its written warranties.

Second, we are actively enforcing the Commission's rules designed to protect consumers in the marketplace. For example, mail-order problems are the single largest source of consumer complaints to the Commission, and an area of particular interest to the elderly, who often must rely on such services because of their lessened mobility. In 1980, a report by the Government Accounting Office found that the Commission had not devoted adequate resources to this area. The Commission now has made scrutiny of mail-order programs one of its highest priorities.

Third, we recognize that, despite best efforts, we cannot remedy each and every problem, and that our intervention usually occurs only after consumers are injured. Thus, we bolster our enforcement programs with efforts to communicate to consumers the rights they have under existing laws and Commission rules. In that way, consumers are better able to protect themselves from being the victims of unlawful activity.

We have given greater emphasis to informing the elderly about high-risk marketplace frauds. For example, nearing completion is a training program that we have developed with the American Association of Retired Persons (AARP). This program will enable consumers to detect questionable solicitations more quickly and bring them to the attention of law enforcement officials more effectively. Of particular concern are door-to-door sales and mail-order shopping. In addition, we have begun work with the AARP on two other training programs, both involving housing. One program deals with independent living, the other with alternatives, such as nursing homes. We are very pleased that the AARP plans to distribute these programs through their network of 5,000 local affiliates around the country.

Other types of consumer education initiatives include information about a wide range of issues. For example, we are developing radio public service announcements to aid consumers in shopping for used cars. We also have available materials on topics ranging from generic drugs and warranties, to consumers' rights under the Equal Credit Opportunity Act.

Let me now turn to some of the areas in which I understand this committee has specific interest.

Consumers aged 65 and older spend almost three times as much on health care per capita as do consumers aged 19 to 64. Because many persons over 65 live on fixed incomes, Commission activities aimed at preventing anticompetitive conduct in the health care industry is of substantial benefit to them. The purpose of our efforts in this area is to stimulate and strengthen competitive forces, thereby decreasing the need for Government regulation, increasing consumer choice among providers of health care services, and lowering their cost. For example, in the *AMA* case, the Commission struck down restrictions on truthful advertising by physicians and on physicians working on a salaried basis for hospitals and health maintenance organizations (HMO's). Physicians are now free to provide consumers with truthful information about the services they offer, including information of critical importance to older Americans—for example, prices for routine services; office hours; whether they accept medicare reimbursement; whether they offer discounts to the elderly; whether they make house calls; and whether they are accessible by public transportation. Hospitals and HMO's are now permitted to employ physicians on a salaried basis, often leading to lower costs. Likewise, the Commission's consent agreement with the American Dental Association allows dentists to advertise such services as fitting dentures—giving many older patients useful information and the benefits of greater price competition.

It comes as no surprise to learn that 9 out of 10 persons over the age of 65 wear corrective lenses. Two of the Commission's programs are of particular relevance here. The first, the "eyeglasses rule," gives consumers the right to obtain a copy of their prescription after having their eyes examined. With that prescription, consum-

ers are then able to comparison shop for eyeglasses, and realize the benefits of the resultant increase in price competition among eyeglass providers.

In its "eyeglasses II" proceeding, the Commission has instructed the staff to investigate various restrictions on the commercial aspects of the practice of optometry. Rules that prevent optometrists from practicing under a trade name, working for a lay corporation, locating their practice in a commercial setting, and from operating branch offices are being studied to determine whether they affect the availability and price of vision care services.

Among the new initiatives directed at health care fraud, the staff is investigating an array of over-the-counter drug products designed to treat infirmities suffered by the elderly, including arthritis. Many of these products are allegedly bogus remedies purchased by desperately ill elderly persons. We are also investigating the marketing and provision of nonsurgical treatments to combat the signs of aging.

Products marketed specifically to consumers with health problems are also of concern. For example, we are investigating advertising claims about foods marketed to consumers with special diet needs.

Another area of continued concern is housing and land sales. Within this program, we have focused considerable resources on time-sharing, a rapidly growing new industry with annual revenues that reached an estimated $1.5 billion in 1981. This growth has been accompanied by an increase in the number of consumer complaints lodged against developers and marketers of time-share units. To respond to the growing number of complaints, we formed a time-share task force in January 1982, to coordinate our investigations in this area. In addition, we are investigating five time-share developers and marketers. Because time-sharing is relatively new, we are particularly interested in determining whether consumers understand the nature and limits of this form of property ownership.

In the area of housing, we have conducted an investigation of the warranty practices of a housing manufacturer that allegedly failed to honor its warranty obligations by claiming that it had gone out of business. We are also conducting investigations of the warranty practices of two builders.

We continue to have an active program of enforcement under the franchise rule, an area where there may be significant fraud affecting the elderly. For example, the Commission recently charged two companies with fraud and violations of this rule, and is seeking civil penalties and consumer redress. One company sold snack food distributorships, and the other sold amusement game business opportunities. Several additional cases are pending in this program.

Franchises are not the only type of investment opportunity where there are serious consumer protection problems. For example, as mentioned earlier, the Commission has pursued an investigation of filing services for oil and gas leases, and has authorized injunctive actions against the Nation's largest marketer of investment diamonds to consumers. We are also investigating deceptive sales practices and outright fraud in the sale of other hard assets and cash commodities.

Age discrimination in granting credit is another area of Commission involvement that is of obvious concern to elderly Americans. Several investigations of alleged age discriminations by financial companies are underway. The practices include denial of credit to the elderly, discouraging the elderly from applying for credit, subjecting the elderly to a higher standard for credit approval, granting credit with more restrictive terms, and failing to consider protected sources of income, such as social security and retirement income.

Another area that deserves the Commission's close attention is the funeral industry. Although funerals are a major purchase, consumers often make their purchase decisions under stress, lacking the benefit of prior purchase experience. Without sufficient information and opportunity to make informed choices, consumers may be harmed.

As you know, last July, a majority of the Commission approved an industrywide rule in this area, which was submitted to Congress for review under the veto provisions of the FTC Improvements Act of 1980. The stated purpose of that rule is to protect consumers in their purchase of funeral services. However, I dissented from the Commission's action on the rule, convinced that preferred options were being ignored.

The Commission's lengthy investigation of the funeral industry disclosed the existence of potential problems of unfairness and deception. Despite its bulk, however, the record was devoid of reliable evidence describing how the industry works or the extent of its alleged problems. Moreover, we had no evidence demonstrating how the proposed remedies would solve these alleged problems. For this reason, I recommended reopening the record to consider updated and reliable data, including the Commission's own highly probative, postrecord "baseline" study of the industry.

Without reliable evidence, the Commission has no basis for knowing whether the rule addresses real problems or instead attacks symptoms. I am concerned, for example, that the rule ignores evidence of anticompetitive practices, such as threats and boycotts, that may have discouraged the development of low-cost, alternative funeral services. Moreover, the paucity of evidence makes the rule vulnerable to a successful legal challenge.

I share your and my fellow Commissioners' concerns about the effects of funeral industry practices on elderly consumers. Because the current rule promises benefits I do not believe it can deliver, I continue to believe its promulgation is an exercise in deception rather than true consumer protection.

The committee's survey also found automobile sales fraud to be a major source of concern among consumers. Some of that concern may stem from the sales practices of the used car industry. I have proposed a revised used car rule to address the industry's two major problems: Misrepresentations regarding dealers' responsibilities to make repairs after sales, and the lack of consumer understanding of dealers' responsibilities when a car is sold "as is." The revised rule would require used car dealers to post a window sticker with information on the warranties provided and their terms, an admonition that written promises are easier to enforce than spoken promises, a statement advising consumers that they may have additional "implied warranty" rights under State law, a clear explanation of what is meant by the term "as is," as well as an identification of the major mechanical and safety systems of the car and whether each is warranted or offered "as is." In short, the rule would require dealers to tell consumers—up front and in writing—who will pay for repairs if a car proves to be defective, whether or not the defect is known at the time of sale. Most importantly, it would do so without creating the uncertainty about the dealer's responsibilities that led Congress to reject the previous rule.

Mr. Chairman and members of the committee, as you can see, the Commission is quite active in addressing the consumer problems of older Americans. Moreover, in recent months we have given additional emphasis to cases involving outright fraud. The orders resulting from these cases will benefit consumers—not only in terms of the redress they receive, but in the increased deterrence value produced by well-directed and vigorous law enforcement. We look forward to working with this committee in the year ahead in identifying and targeting other fraudulent activities affecting older Americans.

Chairman HEINZ. Let me ask other members of the Commission if they have any brief comments or statements. Commissioner Bailey.

Commissioner BAILEY. Mr. Chairman, thank you very much, I would be happy to take my turn in the seniority line and let Commissioner Clanton go first, but if you want me to, I will.

Chairman HEINZ. What is your seniority line on the Commission? We always observe seniority here.

Commissioner BAILEY. I come very close to the end. [Laughter.]

Chairman HEINZ. All right, Commissioner Clanton.

STATEMENT OF DAVID A. CLANTON, COMMISSIONER, FEDERAL TRADE COMMISSION

Commissioner CLANTON. Thank you, Mr. Chairman.

Just some very brief comments. I echo very much what the Chairman has said about the kinds of programs we have. I think, by and large, much of what we are doing in the consumer protection area, even if it is not always directly oriented to the elderly, has had a large indirect effect on them. In fact, I think there is virtually nothing that we are involved in that does not have some special impact for elderly consumers who just are not in the position to shop as readily, to move around and make the decisions that other consumers are. As a result of that, what we are doing here by and large is very good.

I do disagree with the Chairman, as you probably know, on the funeral rule. We have a record that supports action. It is a transac-

tion that far and away is different in its whole nature and scope from any other consumer transaction. There just is not arm's-length bargaining because of the obvious emotional stress and tension that exists in that situation. What we tried to do is develop a rule that is minimally intrusive in the sense of trying to regulate every detailed aspect of that business, but at the same time, provides incentives to consumers, gives them information, makes it easier for them to bargain, and to decide what kinds of services and products they want. The record supports both the fact that there is a problem and the fact that this kind of remedy makes some sense.

I just would like to isolate one additional issue that the Chairman did not specifically allude to—which is important. That is the question of speed of action. The Commission realizes the importance of moving quickly on matters. In past years, the Commission's problem was in part related to the administrative process—where we have to bring a case, have it go before an administrative law judge, then reviewed by the Commission and the courts. And because of action in the midseventies, we obtained clearer authority to go directly into court to get injunctive relief, to get redress, and so forth, where there was clearcut evidence of fraud, garden variety-type deception. Those cases do not deal with a need for special expertise of an administrative body. The law is pretty clear. The question is, What are the facts; what is the kind of relief that is effective? We have been pursuing the latter route much more frequently in the last few years, that is, going into court, seeking prompt relief—in some cases, in fact, in one extreme case, we even sought an ex parte freezing of assets because of the fear that those assets would be dissipated. So, as a practical matter, if we are able to move more quickly and more effectively, we can deal better with some problems that specifically affect the elderly, such as fraud. The difficulty that States have in many cases is they are just not in a position to chase these people around the country. I think we are in a better position than the States in this regard. Admittedly, in some cases, the problem is severe enough to deserve criminal action which, obviously, we cannot pursue. Nevertheless, if we are able to move quickly and effectively, to get injunctive relief and monetary redress, that can be very valuable. I think we are seeing some of the benefits of that.

Thank you.

Chairman HEINZ. Thank you very much, Commissioner Clanton. Commissioner Pertschuk.

STATEMENT OF MICHAEL PERTSCHUK, COMMISSIONER, FEDERAL TRADE COMMISSION

Commissioner PERTSCHUK. Thank you, Mr. Chairman.

I have a short statement. First of all, Mr. Chairman, in undertaking your survey of the economic victimization of the elderly, you and your committee have performed a critical service; there is no doubt of it.

Your landmark study shatters the complacent myth of the uniformly benign marketplace—the myth that older Americans and

other consumers no longer need the vigorous force of Government law enforcement to police unfair and deceptive business practices.

Just for one example, as you know, within the last 2 weeks in every congressional district, delegations of funeral directors have converged on their Congressmen—and perhaps a few Senators—insisting that there is no need for a Federal Trade Commission funeral cost disclosure rule. There is no problem, they insist; no need for Government interference in what they call "the fiduciary trust between the bereaved and the funeral director."

Your survey, which finds funeral abuses among the leading 10 consumer complaints of the elderly, confirms the need for action. Indeed, your study dramatically confirms what the FTC has too slowly come to understand—that the problems of older Americans are and must be a principal concern of the Federal Trade Commission.

Among your top frauds upon the elderly, seven are on the Commission's agenda: Health-related frauds, "bunco" schemes, housing and land fraud, nursing home problems, automobile sales fraud, business opportunity and investment frauds, and funeral industry practices.

In short, your study confirms the Commission's agenda, but it also raises serious challenges to the Commission's priorities and performance. The Federal Trade Commission has been making promises to older Americans for more than a decade. The funeral investigation, for example, was begun in 1972. It is now a decade old.

The truth is, Mr. Chairman, that the Commission has yet to deliver on many of its promises. To the credit of the Commission's present leadership, significant cases have been and are being brought in three areas: Phony investment schemes, credit discrimination against the elderly, and anticompetitive restrictions in the health-related professions.

The committee should note, however, that the Commission faces inherent limitations in the effective pursuit of hardcore fraud. With its powers limited to civil penalties, the Commission historically has had limited success in reaching and effectively policing what is essentially criminal conduct. The Justice Department with its grand juries, the Postal authorities, and the States' attorneys general are generally better suited to prosecute the fringe operators. But where we have some realistic hope, not only of ordering a halt to such behavior, but of recovering assets to be used in reimbursing defrauded consumers, then I certainly support Commission action.

The Commission, as the Chairman has indicated, has continued to challenge anticompetitive restrictions in the professional services, particularly in the health-related professions, especially among physicians, dentists, and optometrists, all areas of prime concern in your survey. Yet the Commission's proposed hearing aid rule, which treats a costly, sometimes painful transaction of critical importance to elderly consumers, has languished.

With the record complete and the hearings concluded, the Commission in October 1979 asked its staff to prepare final recommendations on the proposal to require a 30-day cooling-off period to enable hearing aid consumers to determine whether the hearing

aid is suitable for their particular need. Yet the final staff proposals have not yet been brought before the Commission for action.

Your survey identified mobile home problems as a key issue for older Americans. Yet the Commission's proposed mobile home warranty-performance rule has not been sent forward for action to the Commission, although hearings on the proposed rule were completed in July 1978. Today mobile homes are perhaps the main source of moderately priced new housing available to retired Americans on limited, fixed incomes. The record contains substantial evidence of serious flaws in warranty performance in the delivery of mobile homes, yet action by the Commission does not appear imminent.

Mr. Chairman, you are exactly right when you express—and I quote you—the "startling conclusion that frauds against the elderly are increasing while resources to combat fraud are diminishing."

Unhappily, the hard truth is that the Federal Trade Commission will not soon meet its share of the responsibility for policing the economic exploitation of older Americans. The administration of the Commission is presently committed to policies, priorities, and budget allocations which deflect resources away from actions responsive to the very wrongs your survey has uncovered.

More economists in Washington, fewer law enforcement staff in the Commission's regional offices, excessive and sometimes stultifying layers of economic analysis and review, and an obsession with the pursuit of deregulatory theories at the expense of rules and cases will bring little relief to economically stressed and victimized older Americans.

But at least your hearings serve to call forcefully to the Commission's attention the fact that for all the wonders of the free market, there are human victims of its failures.

Thank you, Mr. Chairman.

Chairman HEINZ. Commissioner Pertschuk, thank you. Commissioner Bailey.

STATEMENT OF PATRICIA P. BAILEY, COMMISSIONER, FEDERAL TRADE COMMISSION

Commissioner BAILEY. Thank you, Mr. Chairman. You can see why I was tempted by your offer to let me go first, but I am used to having to struggle to say something that has not already been said by the time it gets to be my turn.

I want to thank you, along with my colleagues, for asking us to be here to discuss the problems which older consumers face in the marketplace and what the FTC is trying to do about it.

Chairman Miller and others have already outlined a great deal of the Commission's work in several areas, and I would like only to highlight a few specific subjects.

First, I want to emphasize how important I believe the Commission's work in health care is to older Americans. A substantial portion of the Chairman's testimony, and particularly his prepared testimony, concerned our initiatives in that area, and the truth is that all of those activities, and others, have a very significant impact on all consumers, and especially on the elderly. Understanding that, I would like to underscore something that the Chairman mentioned. That is that most, if not all of our work in health

care, would have to be discontinued if professionals and professional associations are exempted from the FTC's jurisdiction, as has been proposed by some in the Congress. I think it is very important, in the context of this committee's concern, to understand what the impact of a profession's exemption would be.

Second, since fraud in the sale of automobiles is among the top 10 problems which appear in the committee's survey, and since I was the spokesperson in 1981 and 1982 for the Commission's used car rule, I will say a word about that.

As you are aware, the Commission promulgated the used car rule in 1981 for the purpose of trying to remedy some of the problems we identified in the used car transaction through the vehicle of information disclosure requirements. The rule would have required a window sticker displaying clear warranty information and an explanation of the meaning of an "as is" sale, and it also would have required dealers to disclose to potential buyers any of a certain list of major defects which existed in the car if the dealer knew about them. That rule was vetoed by both Houses of the Congress. And I believe the Chairman misspoke in his testimony—the constitutionality of the two-House veto, not the used car rule, is presently before the courts, under review by the Supreme Court, and as a result, the used car rule's future status is uncertain.

However, the evidentiary findings on which the Commission based the rule may be of assistance to the committee in evaluating other approaches to this problem, and I am sure the Commission would be pleased to provide any assistance that the committee may wish in this regard.

Third, since my appointment to the Commission in 1979, I have taken a special interest in the problem of credit discrimination, including that faced by older Americans. And here again, I will only add to what the Chairman has said. In 1977, the Congress extended the Equal Credit Opportunity Act's prohibitions on sex and marital status discrimination, to cover, as well, discrimination on the basis of age. The FTC has a major responsibility for enforcing that law with respect to the activities of loan companies, retailers, oil and gas credit card issuers, and issuers of travel and entertainment cards, such as Diners' Club and American Express. Recently, we have begun to concentrate on discrimination against the elderly, and we have developed and will continue to develop law enforcement initiatives in this area. Once again, we would be pleased to provide whatever assistance the committee may wish in pursuing older consumers' credit problems.

And finally, Commissioner Clanton and Commissioner Pertschuk have both described the Commission's recently issued funeral rule, which is now pending before the Congress, for consideration under the legislative veto. I support that rule. I believe it will be of considerable assistance to consumers, and I very much hope the Congress will agree with that judgment.

Thank you.

Chairman HEINZ. Commissioner Bailey, thank you. Commissioner Douglas.

STATEMENT OF GEORGE W. DOUGLAS, COMMISSIONER, FEDERAL TRADE COMMISSION

Mr. DOUGLAS. Good morning.

Thank you for having us here this morning. I think we all welcome your investigation, and it gives us an opportunity to discuss with you consumer protection, particularly that for the elderly.

I can assure you that we all regard consumer protection as one of the most important missions of the Federal Trade Commission, and we look forward to studying the findings and recommendations of this committee.

I would like to make a couple of points—I first would like to echo the point made by Commissioner Bailey as to the importance of our work in the health area. This is obviously an area which is of great concern to the elderly Americans. Many of our cases are very important in restraining inflation in health care costs. The Commission is united in opposing the professional exemption which would prevent us from assisting elderly and containing health care costs.

I would finally just like to make a comment regarding Commissioner Pertschuk's complaint that the Commission is devoting excess resources to economic studies. I think this is a false impression to leave with you. Many of the economic activities are related to deregulation. Deregulation, in many cases, is very important in containing costs of services that the elderly pay. The Federal Trade Commission in the past has assisted in deregulating the airline industry, deregulating surface transportation, which keeps the cost of bus transportation down, which is of importance to the elderly, as well as all Americans.

Second, with a specific example in mind, we have recently successfully prosecuted a case of age discrimination in the granting of credit. The evidence and the detection of this discrimination was possible only by the use of the skills of the economists at the Federal Trade Commission. I see this as a harbinger of more imaginative and effective use of economists in carrying out our mandate, and I would not like to have you get the wrong impression, that the increasing resources that we are devoting to that aspect of law enforcement is meant to do anything but increase our effectiveness.

Thank you.

Chairman HEINZ. Thank you, Commissioner Douglas.

I would like to direct your attention to the survey that the committee has completed.

The survey of the various consumer and law enforcement agencies involved questioning as to consumer complaints, not concerns, but actual instances of things that came into the district attorney's office, the Consumer Protection Agency, the police department, or many of the other agencies that we surveyed.

One of the questions that was asked was, In your experience, are the elderly or the younger age groups more victimized, or are both victimized about the same? Seventy-seven percent of our survey respondents reported that the elderly were victimized more. Now, Chairman Miller, does that suggest to you, frankly, as it does to me, that the Federal Trade Commission's work will result, really, in more protection to the elderly consumer above any other consumer group in the Nation?

Chairman MILLER. Well, Mr. Chairman, I think the Federal Trade Commission must serve all consumers in our Nation. But to the extent that the elderly are especially victimized, I think a special burden is placed upon us to make sure that our programs are effective in addressing their particular problems, as well as the problems of other Americans.

Chairman HEINZ. It would seem to me that certainly, you have a responsibility to all Americans. But given this information—which is literally hot off the presses—which is very reliable—we got very high response rates—it would seem to be fairly difficult to contest the proposition that that group of Americans that benefit the most from your protection are the elderly.

Does anybody want to dispute or support that point? Commissioner Pertschuk.

Commissioner PERTSCHUK. Mr. Chairman, it certainly is correct, and I was just going to observe that the organizations that have been most active and effective in protecting the Commission's jurisdiction, because I think they recognize the importance of the FTC, are the organizations of the elderly such as the American Association of Retired Persons, the National Council of Senior Citizens. I think the expression of their concern that the FTC remain a viable presence in these areas has been an important part of the Commission's support.

Chairman HEINZ. There were 10 frauds that were reported as being most harmful to the elderly—again, these were based on complaints received. Of the 10, it is my understanding that 7 of them fall into FTC jurisdiction. The ones that do not would be home repair and improvement schemes—those would be local—"bunco" schemes—those would be local—and social frauds. But the others, quackery and medical-related frauds, insurance frauds, housing, land sale, and rental frauds, business opportunity frauds, nursing home frauds, automobile purchase and repair frauds, and funeral frauds, are very much in your jurisdiction, and indeed, wathan the jurisdiction of no agency of more import than yours.

Chairman Miller, would you agree?

Chairman MILLER. I would agree with that. I would just beg to point out, Mr. Chairman, we were relieved of our authority over the insurance industry a few years ago, so we do not have direct authority in the insurance area. But you are right, the Federal Trade Commission is the agency that has more authority over these particular items that you have read for us, and it is incumbent upon us to persevere in making sure that these kinds of problems are minimized for older Americans and for other Americans, as well.

Chairman HEINZ. Chairman Miller, in your testimony, you stated that mail-order problems are the largest single source of complaints to your Commission, and that accordingly, you have made scrutiny of mail-order problems a very high priority.

Can you tell us a little bit more about the kinds of complaints you have received and what, specifically, you are doing about them?

Chairman MILLER. Well, the kinds of complaints we receive are very frequently that people receive things that they did not order,

or that checks that they have sent in were cashed, but the orders were not received.

We have a mail-order rule, which is a good rule, and I support it. And what we have tried to do is to both inform consumers of their rights under the mail-order rule and also instruct mail-order organizations and the companies engaged in mail-order business what the Commission's rules are.

And I will have to give credit here to Commissioner Clanton for developing, when he was interim Chairman of the Federal Trade Commission, a program, and working with the Direct Mail Marketing Association, on a brochure that we developed in conjunction with the association. As a result of this, the members of the Direct Mail Marketing Association are sending out thousands of these brochures that are written in plain English that a consumer can understand. It tells the consumer what his rights are and what to do if he receives something in the mail he did not order, or if a shipment is delayed, or whatever.

So it has two effects. It has the effect of telling consumers what their rights are, but it also has the effect of reminding the companies who engage in mail-order sales what their responsibilities are under our mail-order rule. We have been very pleased with this, a kind of cooperative venture that I think serves both consumers and companies. The result is greater conformance with our rule.

Chairman HEINZ. Are you familiar with S. 450, the legislation introduced by Senator Pryor, myself, and others, that would give the Postal Inspector considerably more powers to deal with mail fraud?

Chairman MILLER. I know if it, but I do not know the particulars.

Chairman HEINZ. May I ask you this, Chairman Miller. Would you please take a careful look at that legislation and give us your views on it and whether or not you can support it? It was legislation that was reported favorably last year by the committee of jurisdiction. Personally, as you may gather, as one of the cosponsors, I am very much for it. There is very little known opposition to it, but nevertheless, we did not get it to the floor, and it did not pass last year. We would appreciate your written views on that.

Chairman MILLER. We will be glad to respond.[1]

Chairman HEINZ. Are there any other comments on mail fraud right now?

[No response.]

Chairman HEINZ. If not, I would yield to Senator Cohen, because I know he has a meeting of the Intelligence Committee at 10 o'clock.

Senator Cohen.

Senator COHEN. Thank you, Mr. Chairman, and with your permission, I would like to enter a statement in the record.

Chairman HEINZ. Without objection, so ordered.

[The statement of Senator Cohen follows:]

STATEMENT OF SENATOR WILLIAM S. COHEN

Mr. Chairman, I want to commend you for putting together this morning's hearing to investigate the widespread problem of fraud perpetrated against the elderly. The committee staff has done an excellent job of tabulating and interpreting the

[1] Material referred to not received at time of publication.

results of the survey conducted in 1981 and 1982, whose intent is to determine the extent of this frightening issue, and identify its key elements.

The committee's survey has highlighted the sad fact that instances of fraudulent practices have increased over the past several years and that the elderly, as a segment of our population, are specifically targeted by the con artists involved in these activities. The amount of money that is taken from our senior citizens through fraud and deception is significant, and underlines the fact that this is a very serious problem.

While we all have been "taken for a ride" in one form or another at some point in our lives, no group is singled out, like the elderly are, as potential victims of this kind of crime. The fact that they are targeted in this way poses problems for lawmakers: Should crimes of this nature, because they are perpetrated against a more vulnerable group of citizens, be more strictly sanctioned? Or does such an approach unfairly discriminate against the elderly?

On the other hand, the fact that we are aware of the selection of seniors as prime targets for consumer and economic frauds gives us something to work with. From everyone I have spoken with about this problem, it appears that educational efforts would constitute a major part of the solution of this problem.

In my own State of Maine, we have been fortunate that awareness of fraud perpetrated against the elderly has been increasing recently, not only among those involved in senior citizen advocacy groups or State agencies, but among others as well. Last year, the State attorney general's office joined the Bureau of Maine's Elderly in conducting 20 seminars around the State that dealt with consumer fraud and how to combat it. The seminars were well-attended and well-received, and undoubtedly contributed to a greater awareness on the part of the elderly to their vulnerability to fraud and deception.

With the results of the committee's survey in hand, efforts like that in Maine can be duplicated across the country, in an effort to educate potential victims of fraud and deception. This can be achieved by working through already organized senior citizens' groups, of which there are many, through State attorneys general's offices, and State human services agencies, and through our congressional offices.

Awareness of the extent of this problem is a key to finding a workable approach to reducing its impact on the elderly. Today's hearing is an important part of this process, and what we accomplish here should be expanded, and this information disseminated to all parts of the country.

Again, I commend the chairman for the work he has put into this hearing, and I hope our efforts here today will result in constructive action that will help the elderly recognize and resist fraudulent practices.

Senator COHEN. Mr. Chairman, I commend you for holding these hearings. I think it is an old Chinese proverb that says, "Man fools himself. He prays for long life, and yet he fears an old age." I think this hearing is designed to explore the reasons why that particular expression has a good deal of validity.

Commissioner James Miller, Mr. Chairman, would you explain to me the difference that exists between yourself and the other members concerning the funeral rule? I came in at the very tail end of your statement, and I am not precisely sure exactly what your objections to it are. I think you indicated that its promulgation is an exercise in deception, rather than true consumer protection.

Chairman MILLER. Right.

Senator COHEN. And let me say that I recall sitting on the Small Business Committee back in the Congress in 1973 when this issue first came up, and I frankly found that at that point, the case had been overstated on the need for the regulation and the proposed regulation, was quite extensive. It went into a detailed description as to whether or not individuals should select socks, have an itemized description of whether they wanted underwear for their deceased, and it was really quite extensive, and I recall at that time, those hearings were rather provocative, and the issue has been here for the last 10 years. So I would like to know what the rule proposes that you find is really an exercise in deception, rather

than true consumer protection, because there seems to be quite a split within the Commission itself.

Chairman MILLER. Senator Cohen, let me try to be brief. What we have, I think, is just an honest difference of opinion on the rule among the Commissioners, and I respect my fellow Commissioners for their views on the matter.

Senator COHEN. Give me a summary of the rule itself. What does the rule do?

Chairman MILLER. Well, the rule requires itemized listing, would forbid certain deceptive practices, such as saying that a body has to be embalmed before it is cremated—that really is not true in many States—and things of this nature. But in fairness, the rule the Commission promulgated, pursuant to the directions it received from Congress, is not nearly as precise and specific in all details as the rule that may have been proposed in 1973.

But what we have here is a difference of opinion. As I stated, I am very concerned that the Commission really does not have quite as good a handle on the industry as it should have. There are a lot of changes the industry has undergone since the major data came in. The baseline study the Commission prepared contained certain information about the industry that is inconsistent with the predicate for the rule itself. The Commission refused, however, to receive the baseline study into the evidentiary record. I believe that the probability is significant that the courts will simply find the Commission erred in promulgating the rule, not so much on the basis of its independent judgment about the rule, but in terms of the procedures followed, and the quantum of evidence the Commission had to review, and the substance of that evidence.

Therefore, I believe that there is a significant probability that the courts will overturn the rule, and we will have spent a lot of time going through this process, when we could have promulgated a better rule. For that reason, to advertise to the American people that we are going to do something quite substantial for them, especially for the elderly, when I have strong suspicions that it will never happen, is, I believe, an act of deception.

Senator COHEN. Well, my question is, is it because you feel the court is going to rule that the study that was done, or the recommendation was based on false or incomplete data, and therefore, because of the incompleteness of it all, it is a deception rather than true consumer protection, or do you find that the rules in and of themselves are deceptive in that they will not provide relief? Is it because it is based on inadequate data, or because the rule itself, aside from the data, would not provide true consumer relief?

Chairman MILLER. Well, it is really both. First, I believe there is a significant probability that the courts will find the Commission erred in promulgating the rule.

Senator COHEN. Aside from that issue—set that aside.

Chairman MILLER. Second, even assuming that the courts upheld the Commission's action, I believe it may be deceptive for the Commission to promise a lot in terms of what the rule will do, when I am not sure that all the provisions of the rule will be that positive; and further, the rule does not address some matters that may be of greater concern, and may be more the root causes of the problem that we observe than those addressed in the rule itself.

Senator COHEN. Could you tell me what those are because we are speaking in generalities now, and I assume that Senator Heinz, myself, and others, although I have not been the object of any floodtide of funeral directors coming into my office, I am sure we will be——

Chairman HEINZ. You will now. [Laughter.]

Senator COHEN. But what are the specific objections that you have?

Chairman MILLER. One of the problems is package pricing. The rule requires "unbundling," allowing a person to purchase funeral components individually rather than packages. But it may be deceptive inasmuch as a funeral director can simply price these a la carte items very high and essentially price them out of the market relative to packages. So if we are assuring consumers they will be able to pick and choose when the rule lets funeral directors raise prices on the a la carte items, we are not really delivering that option to consumers.

Second, I am very concerned, although I realize this is an area involving federalism issues, that there is a tendency among State governments and State boards to cartelize the industry by imposing certain rules and regulations that have the effect of setting unnecessarily high standards. These standards operate to reduce competition by restricting entry into the profession, among other ways. This may be far more important, in terms of delivery of services to consumers, than the kinds of matters that we address in the rule.

It is very complicated. In the antitrust area, there are concerns about the effect of the State action doctrine. I do not think these issues were addressed sufficiently in the Commission's deliberations on the funeral rule itself.

We just have an honest difference of opinion about this matter.

Senator COHEN. Do you have a separate opinion on this matter that you have filed?

Chairman MILLER. Yes, sir.

Senator COHEN. Could you supply it to the committee, and then perhaps we could also get the views of the other members specifically on that, because you seem to be alone, I think, virtually alone, in this assessment.

Chairman MILLER. Yes, sir. I do not think Commissioner Douglas participated, so I do not know if he has any proposals. At the time of the voting out, it was the four Commissioners you see on the right.[1]

Commissioner DOUGLAS. This matter was taken up well before I joined the Commission, and I have not had an opportunity to study the record, and at this time, I do not know whether I will be making a statement for or against a veto of the rule.

Senator COHEN. Who conducted the baseline study, Chairman Miller?

Chairman MILLER. The baseline study was developed under the chairmanship of Commissioner Pertschuk—I think it is a terrific idea, and should be followed for every rule.

Senator COHEN. Well, who decided that the baseline study should not become a part of the record?

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[1] Material referred to not received at time of publication.

Chairman MILLER. The Commission, by majority vote.

Senator COHEN. Commissioner Pertschuk, could you explain that? You originated it, and yet it did not become a part of the record; why is that?

Commissioner PERTSCHUK. Yes, the answer is simple, Senator Cohen. The committee's investigation on funerals began in 1972, and the hearing record after 7 or 8 years was finally closed, so that the Commission could finish the rule. The basic problem was one of timing, first of all. The purpose of these baseline studies is to help the Commission evaluate the effectiveness of rules once they go into effect, to take a picture of the marketplace at the time a rule is proposed, so that 2 or 3 years later, the Commission can determine how it has worked. So it was not primarily designed for evidentiary purposes. But in addition to that, of course, we placed it on the public record. If it had shown that something was sharply amiss from the basic thrust of the evidence in the record, then I think it would have been the judgment of the Commission that we would have stopped, reopened the proceeding, taken another year, or 2, or 3 again. But it was our judgment that there was nothing in the baseline study which essentially changed our judgment as to the thrust of the evidence in the record, and it was our judgment, and it has been the judgment of every Commissioner until Commissioner Miller came to the agency that the evidence sustained the basic rule.

On the other hand, his statement of the differences is quite fair. I think one very important point he makes is that much of his difference has to do with the level of evidence and the nature and quality of the record. I think it was our judgment that the record is amply sufficient to sustain court support for the rule. The questions which Congress faces in addressing the rule, I think, are really different, and there, I think Congress is more free to look at the provisions of the rule to determine whether, as they are limited, and all of the provisions that the Small Business Committee looked at, such as the rule that said you could not have odd-colored caskets in order to deflect people from bizarre, lower priced colored caskets, to higher priced caskets—those are all gone. The rule is basically stripped down, and the basic purpose is to give the family arranging the funeral some more choice.

If I may finally, Mr. Chairman, I do have a copy of the statement by Senator Kasten released yesterday, in which he analyzes the rule and expresses his support for the rule, which I ask that you may want to include in the record.

Chairman HEINZ. It has already been noted and it is available to all members of the committee.

Senator COHEN. As I recall, one of the original rules had a recommendation that each individual funeral director must put on notice to the person coming in that they should go and check with a competitor before buying. Is that out, too?

Commissioner PERTSCHUK. I had never seen it, so it dropped out even before I got to the Commission, Senator.

Senator COHEN. Commissioner Clanton.

Commissioner CLANTON. Senator Cohen, I wanted to just add an additional response. The major reason why we did not reopen the record on that point is set forth in the Federal Register, actually,

at page 42268—this is the Federal Register notice that we submitted when we promulgated the rule on September 24, 1982.

Senator COHEN. That is one of the things that does not cross my desk every morning.

Commissioner CLANTON. I appreciate that fact. I must say that—well, I will not comment on the problem of reading the Federal Register; it is difficult—but simply for the purpose of citing the record on that page, and some footnotes.

But by and large, the reason we did not was that the baseline study to which Commissioner Pertschuk referred was an effort to give us a sense of what the world was before we promulgated the rule. We could then follow up to see what improvements had been made after the fact—once that rule had been in place. Essentially, it does not contradict the reason or need for the rule. The major issue that arose related to the question of disclosing information over the telephone. There is a provision in the rule that would require, if consumers request price information, for funeral directors to provide it over the phone. There was evidence in that baseline study to suggest that a considerable number of funeral directors already provided information over the phone. The suggestion was made that perhaps that undercut the need for having a separate requirement in the rule on that particular point. And we recognized that over the intervening 8 or 9 years since we initiated the rulemaking other States may have taken some action, resulting in some improvement. Nevertheless, we felt that information did not negate the fact or the need for putting that proposal in place as an affirmative obligation to make sure that that practice is continued.

In fact, I think the telephone disclosure provision is the most specific area of the rule where there was really information to suggest that the underlying premise might be somewhat different, or the practice of the industry might be somewhat different, than we thought was the case in proposing the rule.

But I would point out that even on the question of telephone price disclosure, we had considerable information in the record, including information from industry people, that suggested that providing telephone price data was not feasible, or very helpful. Funeral industry representatives argued that customers would still have to come in and get much more specific information and that price information generally was not provided over the phone.

Now, the reason for that particular conflict and the fact that the study suggested that it was done more frequently is hard to say. But I think it certainly did not undercut the need for putting a limited but reasonable provision in the rule. Indeed, our action was consistent with the premise that it was feasible to do so and that a rule provision would not have any adverse effect on the industry. I cite that just to underscore one of the principal conflicting pieces of information in that underlying baseline study and why we decided to go ahead with the rule. And, as I indicated, it is explained in some detail in the Federal Register notice.

Chairman MILLER. Mr. Chairman, as Senator Kasten points out in his statement, in a way it is fortunate that that issue of the evidentiary record will be resolved by the courts, so we will have a chance to hear those contentions.

Senator COHEN. Thank you very much.

Chairman HEINZ. Senator Cohen, thank you very much.

I have a number of questions. I am not going to ask them all, because I know you do have another meeting, but I do have one or two I do want to pursue. One that you can answer for the record, though, has to do with pacemakers and pacemaker fraud, which has been a subject of great interest to this committee. Last year, we determined that of the $2 billion spent by medicare for pacemakers, pacemaker warranties, doctors, and hospital bills, as much as $1 billion of the $2 billion is money that should not and need not have been spent.

Now, in 1978, the Federal Trade Commission initiated a review of pacemaker warranties. Our investigation that I mentioned a moment ago, indicated that this effort of yours was concluded in 1980, with a recommendation that certain allegations be transferred to the Justice Department for prosecution.

We heard from the Justice Department that they had not received any such referrals. Would you please provide for the record an explanation of the FTC activities in this area, and specifically whether or not the referrals were made, and if so, to whom, and if not, why not?

It looks like, Commissioner Pertschuk, you will have a little resurrection of history to perform.

Commissioner PERTSCHUK. We will do what we can, Mr. Chairman.[1]

Chairman HEINZ. Thank you very much.

Now, Chairman Miller, we understand that the agency, the FTC, has an investigation of the nursing home industry underway, and you have had it underway for some time, as I recollect. When do you expect that to come to some kind of conclusion, and what kind of results might we expect?

Chairman MILLER. That investigation is housed at the Seattle regional office and has recently been transferred to headquarters for more intensive work. I would be reluctant to give you a precise date as to when that will be concluded. It is a very complicated matter. There are many ramifications and facets of that matter.

I am reluctant to predict, but it is currently pending, and I would imagine we would be getting more information on that matter within a matter of months.

Chairman HEINZ. Of months?

Chairman MILLER. Yes.

Chairman HEINZ. Very well. Commissioner Clanton.

Commissioner CLANTON. Mr. Chairman, could I add a point on that that goes back even before Chairman Miller came onboard. As you indicated, we have had that investigation underway for some time. I do think, however, that even though we have not brought any specific cases or rules, there has been some beneficial impact. I refer to efforts, as a result of our study and investigation, by our staff, to assist other Government agencies, specifically HHS, in devising some standards for nursing homes receiving Federal assistance. Our staff had worked at some length at an earlier point with that Department in devising rules that addressed some of the consumer problems that people in nursing homes were having. That

[1] Material referred to not received at time of publication.

action obviously does not resolve all of the issues, but it does reflect the fact that our involvement in this area had some positive and beneficial results in providing assistance to HHS with respect to its funding standards for nursing homes.

Chairman MILLER. Mr. Chairman, I am corrected that the Bureau Director forwarded a study to the Commission on December 23, and it is now with Commissioner Pertschuk.

Chairman HEINZ. Commissioner Pertschuk, do you have anything to add to the status of the nursing home investigation, on anything that might proceed from that?

[Commissioner Pertschuk conferred with his staff person.]

Chairman HEINZ. I hope the same thing has not happened to the nursing home investigation that has happened to the pacemaker investigation. I am sure that was not intentional, but——

Commissioner PERTSCHUK. There is some confusion as to the precise status of the investigation. I will send a letter to the committee in a day, giving you the status and telling you what the status is, Mr. Chairman.

[Subsequent to the hearing, Commissioner Pertschuk submitted the following letter:]

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

OFFICE OF THE COMMISSIONER

March 1, 1983

The Honorable John Heinz
Chairman
Special Committee on Aging
United States Senate
Washington, D.C. 20510

Dear Chairman Heinz:

I wish to clarify for the record the question of the status of the Commission's nursing home investigation which came up at today's hearing.

On December 28, 1982, as the Chairman indicated, Bureau Director Muris forwarded to the Commission the staff's final recommendations in the nursing home investigation. The matter was assigned to my office to be circulated for consideration to the Commission. Following a review which he had initiated eleven months before, in February 1982, Mr. Muris, along with the Division of Service Industry Practices, overruled the earlier recommendations of the nursing home staff in the FTC's Seattle office and recommended that the entire investigation be closed without Commission action. Upon learning of the Bureau's closing recommendation and the assignment of the matter to my office, Liz Taylor, the staff member in Seattle who had prepared the earlier report, informed me by memo of January 17, 1983 that she believed further information might facilitate my review, and therefore requested an opportunity to submit a responsive memorandum before any action was taken. My office informed both Ms. Taylor and Mr. Muris' office that her request would be granted. On February 18, 1983, less than two weeks ago, Ms. Taylor's memorandum was transmitted to my office via Bureau Director Muris.

There the matter stands. I am presently giving the closest review to Mr. Muris' closing recommendation, as well as to the Seattle staff's dissenting views, and intend to schedule this matter for formal Commission consideration in the very near future.

I hope that this letter corrects any misimpression left by today's testimony that this highly important matter has been unduly delayed in my office. The simple truth is that additional time was allowed, without objection from Mr. Muris or anyone else, for Ms. Taylor to exercise fully her right of dissent by responding to Mr. Muris' critique of the investigation and his closing recommendation.

If I can be of further help to you and the Committee, please do not hesitate to call upon me.

Sincerely,

Michael Pertschuk

Michael Pertschuk
Commissioner

19-930 O - 83 - 4

Chairman HEINZ. Commissioner Pertschuk, I believe in your statement, you stated that the hearing aid rule had, in your judgment, been allowed to languish?

Commissioner PERTSCHUK. Yes, sir.

Chairman HEINZ. Why has that occurred, in your judgment?

Commissioner PERTSCHUK. Well, I think there are probably two reasons. First, in general, the first order of business for the new leadership of the Commission when it came to the Commission after the election was to impose their new standards of evaluating Commission activities, to have a heavy emphasis on economic analysis and a reorientation of priorities to areas such as intervention in other agencies for deregulation.

There were pending at the Commission substantial numbers of rules, and they are hard to deal with. They involve voluminous records. And it takes an enormous concentration of staff energy to put the rules into shape to be sent forward. We have had one or two of the rules which were pending come before the Commission with recommendations for closing, and the hearing aid rule has suffered from the allocation of resources.

The Commission, of course, is down in its overall resources, by one count by 35 percent, and so I think at least part of that is a result of the overall diminution of resources and the lower priorities set for rules such as the hearing aid rule, and I think that is the basic explanation, Mr. Chairman.

Chairman MILLER. Mr. Chairman, could I respond to that by pointing out first that, as Commissioner Pertschuk said, the hearing aid rule was sent back to staff in October 1979, fully a year before the election occurred, when Commissioner Pertschuk was Chairman of the Federal Trade Commission. There must have been some evidentiary problems at that point, some work that the Federal Trade Commission staff needed to engage in, surely, for this whole year's time that it did not report it back to the Commission.

I also have before me a copy of our regulatory agenda printed in the Federal Register. We anticipate having the specific recommendations of the Bureau before the Commission on the hearing aid rule within a matter of a few weeks. It is true that many of the rules we found in the pipeline were languishing because of lack of attention and because the evidence underlying the rule was dated, and insufficient. I think the Federal Trade Commission's consumer protection staff has done a monumental task in trying to put together a sound evidentiary basis for the rules, so that when the Commission acts, if it acts positively on a rule, its action will be upheld in the courts. One thing that is awfully disturbing to me is to look at the court records of the Federal Trade Commission in recent years, to find how frequently the Commission was overturned in the courts. If we are doing our job, we will be sustained in the courts. And I think again, it is deception on the American people for the Federal Trade Commission to move forward with rules or regulations that will not be sustained by the courts.

Chairman HEINZ. On that point, which was one of two you made regarding deception on the funeral home rule, maybe it will be of some help to you and members of the Commission to note that the study that we have done, which is very current, cites funerals

among the highest instances of complaints. It was among the top 10 and we asked about 30 or 40 different areas.

Chairman MILLER. Right. No question.

Chairman HEINZ. That is not dated, that is not old.

Chairman MILLER. No; you are absolutely right. No question but that industry is one deserving of serious attention by the Federal Trade Commission. The question is how best to address the problem.

Chairman HEINZ. One last question, and then I will recognize Senator Pryor, if he has an opening statement or any questions.

Several of you have made reference in one way or another to the new standards of economic analysis. Now, some people who are not on the Commission, including myself, are really, frankly, unable to tell how worthwhile that is or whether it is a device for slowing things down that might be a little unpopular.

Let me ask each of the members of the Commission in turn, if I may, how valid and valuable they think the new standards of economic analysis are.

Chairman Miller, obviously, you support that. They came in with you.

Chairman MILLER. Well, Mr. Chairman, actually, in fairness, I think what we have done is to improve the focus of the economic analysis that was already going on at the Federal Trade Commission. Actually, in terms of the proportion of the Commission's resources, the economic analysis, the pure research, is down. We have increased dramatically the proportion of the Commission's economic resources going directly to law enforcement programs.

I believe it is very important to have such analysis, because I think it results in, (*a*) bringing better cases, (*b*) bringing cases that really do help consumers and do help competition, and (*c*) bringing cases that will be sustained by the courts.

So, going back to Commissioner Douglas' point, I think such economic analysis is essential, but I do not want you to get the idea that we have suddenly increased the resources. We have just done a better job of more efficiently meshing the needs of the Commission to the resources that we have.

The purpose is not to slow down things. The purpose is to make sure that the things that we do are done very well. And I think if you look at the output, especially in the consumer protection area, you will see how it has come up, how we have focused on the best cases.

Chairman HEINZ. What is the average length of time in which the FTC is involved with an issue before coming forth with a rule?

Chairman MILLER. There is a wide range. I would have to get the statistics. Obviously, a rulemaking can last 10 years. An individual fraud case could last a couple of weeks.

Chairman HEINZ. Well, I am talking about rulemaking.

Chairman MILLER. Well, we of course have had rulemaking authority only for a decade, but we will——

Chairman HEINZ. And you are going to get some rules made any year now, right?

Chairman MILLER. Pardon?

Chairman HEINZ. You are going to get some rules made one of these days.

Chairman MILLER. Well, we have promulgated a number of rules, Mr. Chairman, but we also have several rules in the pipeline right now that we will be acting upon. There are, as you know, several rules that we have promulgated.

Chairman HEINZ. But on the average, a rulemaking will take several years?

Chairman MILLER. Yes.

Chairman HEINZ. To what extent, irrespective of the validity of the economic analysis, would you say that that slows a rulemaking down—by a month, by several months, by years?

Chairman MILLER. Well, Mr. Chairman, I just find it almost impossible to understand how the Commission could go through the requirements of the Magnuson-Moss Warranty Act rulemaking and meeting the requirements of the Administrative Procedure Act without having economic input. So I cannot simply——

Chairman HEINZ. Chairman Miller, I am not trying to take a position with respect to the validity of that. I am simply asking a question of fact——

Chairman MILLER. I simply cannot answer how much economics input slows down a rulemaking. The basic point, Mr. Chairman, first, is without economic analysis, I do not think the Commission could be sustained in the courts on a rule. So there has to be economic analysis to have a rule sustained. You could have a thought experiment and say how quickly could we get a rule through, but the decision on how quickly a rule goes through is one the Commissioners make depending on how they think the evidence is being put together, the fine-tuning of the staff's recommendations, and that sort of thing. It is a time-consuming process, but it is very difficult for me to have a thought experiment to say how much economic input, anymore than how much legal input; without which you could not have a rule sustained in the courts, affects the timing. I just cannot see how you could separate it.

Chairman HEINZ. Are there any other comments?

Commissioner Bailey.

Commissioner BAILEY. Thank you, Mr. Chairman.

I agree with the Chairman on the difficulty of trying to evaluate the problems that may be caused by economic input in a rulemaking. The more relevant factor, I think, is the degree to which the proposed rulemaking is controversial at large and within the industry that it is proposed to deal with.

If it is controversial, it is likely to take a much longer time to get the amount of information, particularly information in the hands of the industry, that is necessary. And I just would illustrate—the used car rule was 9 years finally getting finished. The funeral rule is nearly a disgrace, the length of time that it has taken. But the R-value rule, concerning the effectiveness of insulation, where the industry itself was eager to have something that was understandable by consumers, and therefore was in general, cooperative, did not take more than 1½ years to get a complete evidentiary record that we were certain would be sustained by the courts.

So I think there are other factors that have a very significant impact on the amount of time that it takes to do these things.

Chairman HEINZ. Commissioner Pertschuk.

Commissioner PERTSCHUK. I was just going to reply briefly, Mr. Chairman. I think the rhetoric about the usefulness of an economic analysis is one that we probably all could share and make the same speeches—that is, that it is necessary, that of course, the Commission should use economists to make sure that what it is doing is of economic benefit, exceeding its cost. The problem is in the application.

My criticism of much of what has gone on is that the economic analysis is applied, although in an apparently scientific way, with a strong ideological bias, against Government intervention in the marketplace for any reasons whatsoever.

The fact is that both the Chairman and Commissioner Douglas have cited the use of economists in developing a means of attacking age discrimination in credit. That is a marvelous use of economists, and I applaud it. It is exceedingly rare. The fact of the matter is that 99 out of 100 times, several layers of economists will essentially spend a lot of time and a lot of energy attacking the basic theory of staff's development of a case.

Challenging it is healthy. I am not saying that we should adopt a know-nothing approach. But in some cases where you have staff investigating a per se violation of the law, a law that the courts have said is a de facto violation of the law, we have spent exceedingly great quantities of time and paper in asking whether that is of economic benefit. So we are not dealing with a fundamental question of whether the Commission should not apply economic analysis, but the way in which it is applied, the extent of energy and resources applied to challenging what have been fundamental and basic parts of the law.

Chairman HEINZ. Senator Pryor.

STATEMENT BY SENATOR DAVID PRYOR

Senator PRYOR. Thank you, Mr. Chairman.

I have a prepared statement I would like to have inserted in the record.

Chairman HEINZ. Without objection, so ordered.[1]

Senator PRYOR. I would like to just make one or two comments, and not necessarily related to the Federal Trade Commission. But Mr. Chairman, the survey that you authorized—I think the findings are very, very interesting. There are two general findings–one is that consumer fraud is increasing, and I think that those figures are pretty astronomical—12 percent yearly increases in frauds—and entangled directly with that is that the elderly are those who are most frequently victimized or abused. I would not even say that the elderly today are walking targets—they are more like "sitting targets" in many instances, and totally vulnerable to many of these frauds.

Last year, Chairman Heinz, myself, and other Members of the Senate, along with Congressman Pepper attempted to adopt a postal fraud bill which would have gotten at some of these frauds. Unfortunately, through some final hangup in the lame-duck ses-

[1] See next page.

sion, it got caught, and we could not bring it to a final vote. We hope to once again work for enactment of that piece of legislation.

I think the survey results, Mr. Chairman, are very revealing and certainly, let us say, accentuate the need for congressional action that would further protect the elderly. And I want to compliment you, Mr. Chairman, for your work and for calling this hearing this morning.

I will have further questions, I think, for the Postal people, and I thank the very distinguished members of the Federal Trade Commission for their appearance.

Chairman HEINZ. Chairman Miller and members of the Commission, thank you very much. We appreciate your accommodating the committee and appearing. You have been very helpful, and we appreciate it.

Chairman MILLER. Thank you, Mr. Chairman.

[The prepared statement of Senator Pryor follows:]

PREPARED STATEMENT OF SENATOR DAVID PRYOR

Mr. Chairman, I want to take this opportunity to commend you for scheduling this hearing on methods to combat frauds against the elderly. I cannot stress enough the importance of educating the public about these schemes, and about ways to avoid being taken by the con artists who perpetrate them.

For many years now we have known of the financial, physical, and sometimes psychological devastation which can result from such trickery. Unfortunately, the prevalence of these schemes is growing each year (some estimate an increase of 12 percent annually) and consumer fraud has become almost epidemic in its proportions. The Postal Inspection Service estimates that billions are lost yearly to schemes which involve anything from medical-related fraud, to phony investment proposals, to funeral fraud. The Arthritis Foundation estimates that over $1 billion is lost yearly to phony arthritis cures alone. One of the saddest aspects of this situation is that over 60 percent of the victims of these frauds are senior citizens.

My interest in the area of consumer fraud, and particularly frauds which are perpetrated through the mails, was heightened when Congressman Pepper, then the distinguished chairman of the House Select Committee on Aging, shared with me the results of ongoing investigations by his staff. The staff uncovered numerous examples of consumer frauds which were taking place in every State in the Union.

In response to these findings, Chairman Pepper introduced legislation which would give the Postal Inspection Service (the investigative arm of the Postal Service) better enforcement tools to pursue these con artists. I introduced that legislation in the Senate, along with many of my colleagues on this committee.

The legislation successfully made it through the Senate and was amended in the House of Representatives last year. Unfortunately, there was not time to consider the amended version in the Senate before the end of the session. On February 3 of this year, this legislation was reintroduced as S. 450, and tomorrow I will testify before the Senate Governmental Affairs Committee on this bill.

S. 450 would considerably increase the effectiveness of the Chief Postal Inspector, and I intend to do all within my power to see that swift action is taken on this legislation in the Senate. Mr. Chairman, I would like to thank you and the able staff of the Senate Aging Committee for your assistance in the last Congress on this legislation, and I look forward to working with you in the coming months on this issue.

I do want to stress that, in addition to legislative remedies in this area, it is also of the utmost importance that we educate the public on the prevalence of these fraudulent schemes, and on how to avoid being victims of them. The staff of this committee has done a great service for the consumers of this Nation by conducting the survey of consumer problems and economic fraud, and I hope that the results will be widely circulated and utilized by consumer education groups. I am certain that today's witnesses' stories will illustrate the need to disseminate this type of information, and I look forward to their testimony.

Chairman HEINZ. While our panel from the U.S. Postal Service is coming forward, I would just like to observe that the committee's recent survey has determined that many of the frauds perpetrated

against the elderly are carried out through the mails. It is for that reason that I welcome Charles P. Nelson of the U.S. Postal Service, Criminal Investigations Division. Mr. Nelson is accompanied by George C. Davis, Assistant General Counsel, and Wayne Kidd, Manager of the Fraud Branch.

We will hear Mr. Nelson's statement and then ask questions as needed.

Mr. Nelson.

STATEMENT OF CHARLES P. NELSON, WASHINGTON, D.C., ASSISTANT CHIEF POSTAL INSPECTOR, U.S. POSTAL SERVICE; ACCOMPANIED BY GEORGE C. DAVIS, ASSISTANT GENERAL COUNSEL; AND WAYNE KIDD, MANAGER, FRAUD BRANCH

Mr. NELSON. Thank you, Mr. Chairman.

We are here today at your invitation to discuss the problems of mail fraud and its impact on the Nation's elderly. Mail fraud is not a new problem. It has undoubtedly been practiced since the introduction of the first public postal system. However, public concern for this form of fraud has increased with the emergence of today's multibillion-dollar-a-year mail-order industry. The growth of this industry has been accompanied by an increase in the number and sophistication of deceptive mail-order promotions. While the vast majority of mail-order businesses are legitimate, a small minority continues to threaten the integrity and reputation of the entire industry, as well as the public's confidence in the sanctity of the mails.

The specter of mail fraud is particularly vivid for our Nation's 26 million older Americans. Unfortunately, many fraudulent schemes tend to prey most heavily on the elderly, who, because of fixed incomes or limited mobility, often rely on the convenience of mail-order shopping. Because of the nature of the schemes involved in our cases, we believe that a high percentage of mail fraud and misrepresentation victims are senior citizens.

Over a century ago, Congress desire to protect the public from marketing schemes conducted by mail led to the enactment of the criminal mail fraud statute, 18 U.S. Code, section 1341, and the administrative false representation statute, 39 U.S. Code, section 3005. The Postal Service uses the provisions of these two statutes—the Nation's first consumer protection statutes—to combat mail fraud.

The criminal statute provides for fines and imprisonment for intentionally using the mails in furtherance of a fraudulent scheme. It is a powerful deterrent. But during the time that the mail fraud is being investigated and prosecuted, the scheme may continue to operate and victimize the public.

The administrative statute offers an opportunity to protect the public from becoming victims of schemes to obtain money or property through the mail through false representations. This statute has a very simple mandate—that persons selling goods or services by mail refrain from the use of advertising which will mislead prospective purchasers in any material respect. Its principal sanction is an administrative mail stop order issued pursuant to procedures under the Administrative Procedure Act. The order is designed to

prevent the consumer's money from reaching the operator of the scheme by requiring its return to the sender.

A formal complaint is filed with the Postal Service's judicial officer. A copy of the complaint, a notice of hearing, and our rules of practice are served upon the promoter, called the respondent in our cases. The complaint is assigned to an independent administrative law judge, who presides impartially over the proceedings. He or she conducts a formal evidentiary hearing where the respondent may be represented by counsel, present testimony, and cross-examine our witnesses. The administrative law judge renders an initial decision which recommends, or not, the issuance of a mail stop order. The entire record, including a transcript of the hearing, is reviewed by the judicial officer. If he concludes that the Postal Service has proven by a preponderance of the evidence that the statute is being violated, he will then issue a mail stop order.

The statute's underlying expectation is that if the operator is prevented from receiving his profits, he must either reform his promotion to avoid misrepresentations or cease marketing his product by mail. Unfortunately, this expectation is not always realized, due to existing loopholes in the statute. Since the Postal Service must first obtain an advertised product before filing an administrative complaint, many operators postpone the mailing of their products until they have received most expected orders.

In our experience, delays in receiving the sample product in excess of 1 month are by no means uncommon. Even after a valid mail stop order is issued, a promoter can continue to operate simply by changing the name or address of his business. In this case, a new mail stop order must be sought.

During fiscal years 1977 through 1982, the Postal Service filed approximately 1,309 false representation complaints. This resulted in the issuance of 542 mail stop orders and the signing of 650 consent agreements.

I would like to highlight a few examples of recent schemes in which many of the victims were elderly citizens.

Exhibit 1 is Braswell, Inc., Atlanta, Ga. and Fort Lauderdale, Fla. Between July 1980 and September 1982, 138 false representation complaints were filed involving 50 different products marketed by Braswell, Inc. Thirty-two false representation orders were issued, and 15 consent agreements were signed by Braswell. Among the products sold by this promoter were alleged antiaging preparations and baldness cures. According to the evidence in one of the cases, the promoter sold over $2 million worth of valueless baldness cures during the first 6 months of 1980.

[Exhibits referred to appear at end of Mr. Nelson's statement, pages 35 to 41.]

Exhibit 2 is the Phillips Envelope Co., Salinas, Calif. Between July 1978 and July 1981, 17 envelope stuffing promotions were the subjects of false representation complaints filed against this promoter. The promoter used nine different trade styles at 17 addresses during this time period. False representation orders were issued against these schemes. In 1982, the promoter was found guilty of mail fraud; 43,000 victims of the scheme, many of them elderly persons, collectively suffered an estimated $500,000 loss.

Exhibit 3 concerns the Herbal Education Center in Vermont. The promoter of this scheme mailed over 800,000 catalogs, advertising cures for cancer, arthritis, varicose veins, and other serious illnesses. More than 30,000 persons responded to the mailings and collectively invested an estimated $150,000. In June 1981, a false representation action was filed against this promotion which resulted in a consent agreement. In February 1982, the promoter of the Herbal Education Center was sentenced to 5 years probation and fined $6,000.

Exhibit 4 concerns investments and took place in Boston, Mass. Over a 9-year period, a Boston attorney swindled 100 of his elderly clients by convincing them to invest in a variety of promotions with promises of 15 to 20 percent annual interest and a full return of their principal in 1 to 3 years. He gained the confidence of many of his victims as a result of his position as president of a religious organization. In many instances, he knew the financial status of his victims because he had prepared their wills for them. As soon as they received an insurance settlement upon the death of a spouse, he would induce them to invest money with him. Most of the money received was invested in his name or in the names of members of his family. To prevent his clients from knowing what actually happened to their money and enable him to continue his swindle, the attorney sent them some interest payments. The attorney received a 1-year prison sentence.

Exhibit 5 involves Potency Plus, a scheme that was run out of Memphis, Tenn. The promoter sent direct mail advertisements to thousands of senior citizens nationwide, offering the "Miracle of the Eighties," a product which allegedly would stop the process of aging and increase the lifespan of the user. It was to be used by those suffering from arthritis, bad eyesight and hearing, gallstones, high blood pressure, gout, ulcers, blood clots, constipation, heart disease, stroke, and all the other maladies of aging. For $20, victims received a 60-day supply of pills consisting of vitamins C and E and a so-called miracle ingredient, "Panax." Medical experts refuted these claims, but 7,000 persons purchased this cure-all product before the promotion was stopped by a false representation order.

Exhibit 6 is the Worm Growers' Exchange of Smyrna, Tenn. Through ads in numerous newspapers throughout the United States and Canada, the promoter solicited individuals on retirement or fixed income to raise earthworms in their backyards. Victims were told the National Worm Growers' Exchange was ready to buy back all worms at a large profit to the grower.

For an initial investment of $2,500, victims received 30 pounds of worms, some newsletters acclaiming the many successes of worm farms, and an earthworm cake recipe—that is all they received. Over 2,000 victims lost $3.5 million to this fraud. The five individuals responsible for this scheme were sentenced in 1980, to 3 years in prison with probation ranging from 3 to 5 years.

Exhibit 7 concerns Great Life Laboratories of New Jersey. The promoter advertised two products: One, an "amazing skin formula that would— allegedly—lift aging skin right off your face in just 7 seconds." The price was only $12.50 for this jealously guarded and treasured beauty secret known throughout Europe and America.

The doctor who refuted these advertising claims stated: "Washing with soap and water would accomplish the same results as using this product."

The second product, based upon an alleged significant breakthrough in the fight against aging, consisted of RNA tablets and a "no aging diet." None of the operator's claims were medically sound, and the promotions were stopped by the issuance of a false representation order.

That is the last exhibit we have. I would like to just mention a few insurance-type schemes that involve the elderly. Approximately 100 elderly women were defrauded through the sale of a worthless health insurance plan. Some victims were paying between $6,000 and $9,000 per year in premiums. One 93-year-old lady was sold maternity insurance. The promoters were fined $25,000 and sentenced to serve 18 months to 4 years in Federal prison.

In another case, approximately 100 elderly citizens were collectively swindled out of $100,000 by an agent through the sale of insurance which allegedly supplemented existing medicare coverage. The agent was found guilty of mail fraud and sentenced to a 4-year prison term.

In conclusion, I would suggest that increased public awareness and caution are essential to a meaningful reduction in the ability of unscrupulous promoters to deceptively market their products by mail. I would like to thank the committee for its efforts to bring this problem to the public's attention and hope that your efforts will certainly serve to heighten public awareness.

Exhibit 1

BRASWELL, INC., ATLANTA, GA/ FORT LAUDERDALE, FL

TIME FRAME (JULY 1980 - SEPTEMBER 1982)

FALSE REPRESENTATION COMPLAINTS	138
NUMBER OF PRODUCTS INVOLVED	50
FALSE REPRESENTATION ORDERS	32
CONSENT AGREEMENTS	15

PRODUCT PRICE RANGE
$10.00 TO $45.00

Exhibit 2

PHILLIPS WORK-AT-HOME ENVELOPE STUFFING SCHEME

TIME FRAME (JULY 1978 THRU JULY 1981)

TRADE STYLES	9
ADDRESSES	17
CIVIL COMPLAINTS FILED	17
FALSE REPRESENTATION ORDERS	17

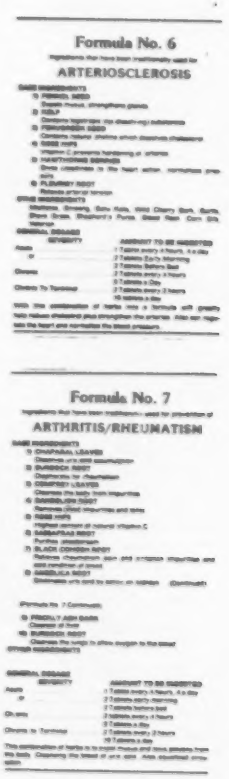
CRIMINAL ACTION

INDICTED 2-17-82
CONVICTED 4-19-82
SENTENCED 6-17-82

VICTIMS 43,000
ESTIMATED LOSS $500,000

Exhibit 3

MEDICAL FRAUD

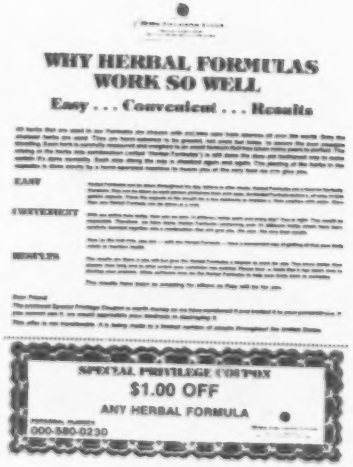


Formula No. 6

ARTERIOSCLEROSIS

Formula No. 7

ARTHRITIS/RHEUMATISM



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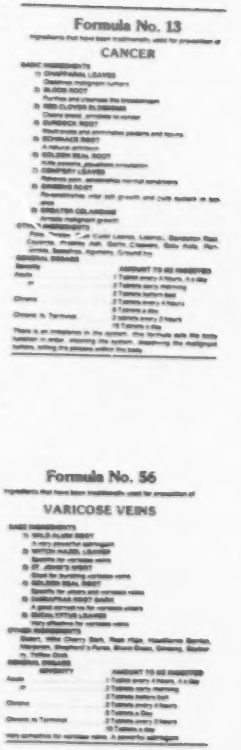

Formula No. 13

CANCER

Formula No. 56

VARICOSE VEINS

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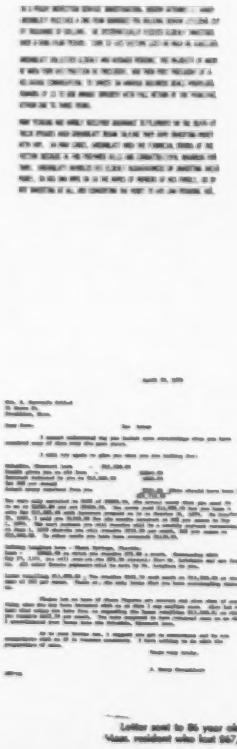
Exhibit 4

INVESTMENT SWINDLE

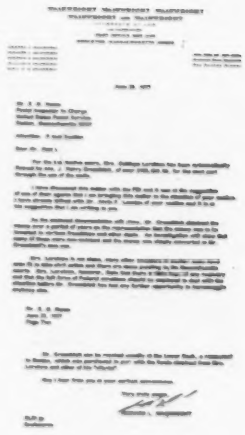


Letter sent to 86 year old Mass. resident who lost $67,000.

Widows swindled...attorney indicted

Threatening letter

Lulling letter



BEST COPY AVAILABLE

Exhibit 5

MEDICAL MISREPRESENTATION

Miracle Breakthrough To Help Stop Aging

Now You Know The Story Of POTENCY PLUS
To Find Out How You Can Take Advantage Of The Miracle Of The 80's
Turn to page 16

GLOBAL INTERNATIONAL NEWS
Dedicated To Vim, Vigor, Vitality & A Fulfilling Love Life
Miracle Compound Discovered
Panax, The Sex Stimulant

What The Brain Needs
Special 60 day Supply, just $20

Panax, Protector Of The Sick

A Friend In Need For Arthritics

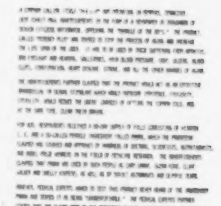


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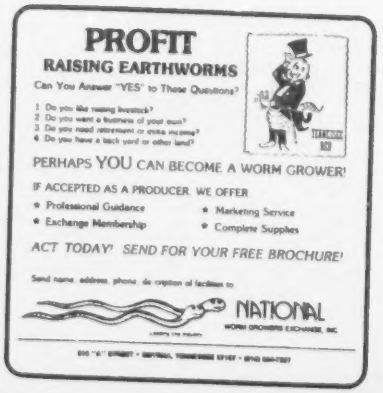
Exhibit 6

PHONY WORM FARM FRANCHISE

Member-Shipper

NATIONAL WORM GROWERS EXCHANGE, INC

Code of Ethics


PROFIT

RAISING EARTHWORMS

Can You Answer "YES" to These Questions?

1. Do you like raising livestock?
2. Do you want a business of your own?
3. Do you need retirement or extra income?
4. Do you have a back yard or other land?

PERHAPS YOU CAN BECOME A WORM GROWER!

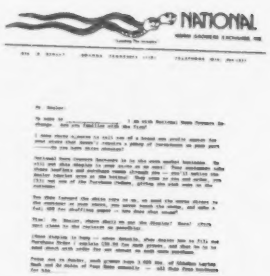
IF ACCEPTED AS A PRODUCER, WE OFFER

- Professional Guidance
- Exchange Membership
- Marketing Service
- Complete Supplies

ACT TODAY! SEND FOR YOUR FREE BROCHURE!

Send name, address, phone, description of facilities to

NATIONAL WORM GROWERS EXCHANGE, INC.

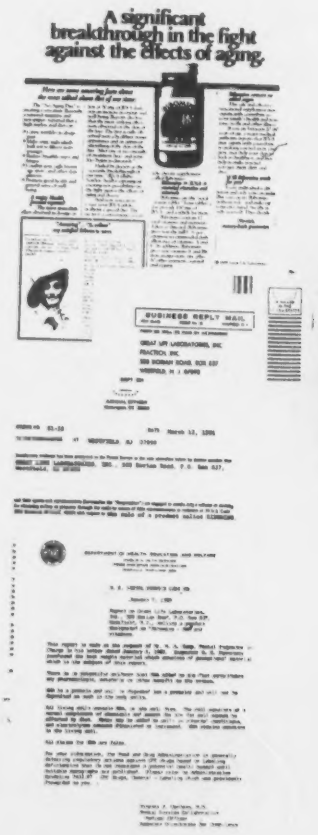

NATIONAL

EARTHWORM Raising as a full time / part time BUSINESS

BEST COPY AVAILABLE

Exhibit 7

MEDICAL MISREPRESENTATION



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Chairman HEINZ. Mr. Nelson, thank you very much. Those were absolutely fascinating examples of how an apparently very large number of unscrupulous people prey on our elderly.

I gather from the first example, Braswell, that this company time and again gets in trouble with you. You mentioned there were 138 complaints, there were 50 products, there were 32 false representation orders, there were 15 consent agreements. Now, tell us—a false representation order is something issued by you; is that correct?

Mr. NELSON. A false representation order is issued by the judicial officer, not the Inspection Service.

Chairman HEINZ. By the judicial officer. And then, the consent agreements would also be judicial agreements, would they?

Mr. NELSON. They are judicial agreements. They are agreements entered into between the operator of the scheme and the USPS.

Chairman HEINZ. So we have literally dozens of instances where this particular company has gotten in trouble with the law?

Mr. NELSON. Yes, that is right.

Chairman HEINZ. Now, as you are no doubt aware, Senator Pryor and I, and others, have a bill, S. 450, that is designed to give the Postal Service some additional power to deal particularly with the kinds of recidivist behavior that this exemplifies.

Are you familiar with our bill?

Mr. NELSON. Yes, I am.

Chairman HEINZ. Do you believe that it would be beneficial to the Postal Service in your efforts to combat consumer fraud?

Mr. NELSON. Yes, I believe it certainly would be, especially in two areas. You mentioned recidivism. At this point, as I testified earlier, an operator merely has to change his address or the name of his company, and he starts again. We would then go through the same procedure of ordering the material by mail and the judicial proceedings at Postal Service headquarters.

The provision in the bill, if they start the same scheme again, allows for the Federal district court to fine them up to $10,000 per day. I think that is going to be a tremendous help.

Another portion of the bill that should be very helpful is our ability to go right to the firm and say, "Here is the cash. We would like the product or the service that you are offering." At this time, we order all of these products by mail. And again, as I mentioned earlier, many of these promoters will wait up to a month and some of them longer, before they send any orders, if they send them at all.

Chairman HEINZ. I think that is a point well worth making. Right now, you cannot go to the doorstep of the person who is perpetrating some type of mail fraud scheme, and you cannot demand and get a product. You are prevented from doing that by law; is that not correct?

Mr. NELSON. No, we are not prevented from doing it by law.

Chairman HEINZ. What prevents you from doing anything?

Mr. NELSON. George, do you want to take that?

Mr. DAVIS. As a practical matter, we could go to the door, and we could be thrown out. There is no sanction in the statute that requires anyone to honor a request to sell the product.

Chairman HEINZ. I misspoke myself. You cannot require that a sample of that product be delivered to you on payment of the purchase price.

Mr. DAVIS. That is correct, Mr. Chairman.

Chairman HEINZ. And as a result, as you point out, months may go by—indeed, a lot of these con artists will deliberately delay sending the product, so that they minimize the chances of sending something to a law enforcement official like yourselves. Then after finally mailing the product, if they ever do, they can change their address, or just plain scram; is that correct, Mr. Nelson?

Mr. NELSON. Yes, that is true.

Chairman HEINZ. And our bill will give you the authority to require, upon the presentation of the purchase price, the delivery of such products on demand; is that not correct?

Mr. NELSON. Yes, it will.

Chairman HEINZ. So in sum, you think that S. 450 and the authority in it, will give you the opportunity to do a far better job of protecting the public from the kinds of ridiculous and clearly, very dangerous schemes that we have seen?

Mr. NELSON. We feel S. 450 will be very beneficial if it is enacted.

Chairman HEINZ. Now, in the survey that the committee made of law enforcement and consumer protection agencies around the United States, we learned that of all the frauds that have an impact, medical frauds have the largest impact on the elderly. Other people have said, by the way, that these medical frauds, these products that are claimed to be helpful, grow hair, retard aging, and generally, do things that have to do with the fountain of youth, are essentially harmless, and that the Post Office should not be concerned with controlling these harmless gimmicks that may cost a few dollars.

In your experience, quite apart from the fraudulent representations involved, is there any harm associated with these remedies, and if so, what? Are they as harmless as some people claim?

Mr. DAVIS. I think in some of our cases—unfortunately it has been a low percentage of them—the product that is being sold is directly harmful to the user. I remember in particular a product we had some 5 or 6 years ago that was designed to remove facial blemishes, but in fact, contained an acid. If it were to be used near the eyes—and there was no warning of this on the product label—it would blind the user. But indirectly, many of these "snake oil" remedies that we see have the harm of misleading the buyer into believing that he or she is using a valid medical treatment to address a potentially serious problem, when in fact, that is not the case. They will be taking some worthless swampwater cure for arthritis, when they should be receiving competent medical help that might do something to alleviate or prevent the increase in damage of the disease.

I think also, the disappointment of the users should be noted. There has got to be a great deal of disappointment in anyone who falls for one of these things; first, because they feel that someone has made a sap of them, and moreover, they may feel that the system is working against them, that this sort of thing should not happen to them. It has got to be very disappointing, I think.

Chairman HEINZ. Thank you very much.

There is a vote on. Senator Melcher and Senator Pryor have gone and will return, shortly. I am going to simply turn over the gavel, while I go and vote, to Senator Pryor upon his return, but I will have to leave now. So Senator Pryor will chair the hearing when I return, following our "early bird" rule.

So thank you for being here. Just because I am leaving does not mean you should leave.

Thank you.

[Short recess.]

Senator PRYOR [presiding]. Mr. Nelson, I believe you have all of your group here. I will chair the meeting momentarily until Chairman Heinz returns, and we will continue.

I have two or three questions that I would like to pose. First, can you give us any estimate of the amount that is lost yearly to fraudulent schemes that are perpetrated through the mails? You may have had that in your original statement, but I do not know that I caught it.

Mr. NELSON. No, I did not have that, and it is very difficult to give that estimate. I could not really give you a figure and have confidence in it, because there is so much that is not reported to us.

Senator PRYOR. I understand.

What efforts at this time does the Postal Inspection Service make to educate the consumer in America about these fraudulent activities?

Mr. NELSON. We have for a number of years had a consumer protection organization within the Inspection Service that speaks to various groups throughout the country. They make all kinds of TV and radio appearances. They will talk to senior citizens' groups. We have a consumer protection portion of that program that tries to assist in resolving mail-order-type complaints where it appears to us to be a poor business practice as opposed to an intent to defraud.

Senator PRYOR. What ways would you recommend to the consumers, and certainly, the elderly, to verify that an offer is either on the level or one that is somewhat shady in nature?

Mr. NELSON. Well, there are several things a person can do. You can certainly talk to a friend or your attorney. You can contact Better Business Bureaus or chambers of commerce, in an effort to, as you say, validate the authenticity of the firm you are thinking of dealing with.

Senator PRYOR. I assume that the Office of the Attorney General in most States has a consumer protection unit or a fraud protection unit.

Mr. NELSON. Yes, I think that is true.

Senator PRYOR. What about the individual who has been "taken"—what should he or she do to minimize the losses, and how do they minimize their losses?

Mr. NELSON. Generally, in our investigations, I think, once you are "taken" that one time, I am not sure that you can do anything to minimize that loss. Usually, in the cases we are talking about, it is a one-time affair.

Senator PRYOR. So, the horse is out of the barn, and there is not much that can be done at that point.

Mr. NELSON. That is right. And it seldom occurs in our court proceedings that the offenders have any money left or any assets left to make restitution.

Senator PRYOR. To what degree do local consumer groups get involved in educating the public about mail fraud schemes?

Mr. NELSON. They are quite active. We work with many of them throughout the country, and try to dovetail with their local programs. It has been our opinion that they are quite active in consumer protection.

Senator PRYOR. I think from recent testimony, as I recall, I believe possibly before Senator Pepper some year or so ago, you or your people testified that it is hard to blacklist, if you want to use that term, some of the fraudulent companies because they are constantly changing their names from week to week or month to month. Is that still a practice that you are finding?

Mr. NELSON. Yes, that is still a practice. It is a practice that hopefully this legislation will help address.

Senator PRYOR. Where do you find that your hands are tied, in trying to not only educate, but also to enforce the law against some of the fraudulent activities?

Mr. NELSON. I do not think we find our hands tied in our efforts to educate. In enforcement, there are basically two areas that cause us a lot of problems. One, is that we order all these products or services offered by mail, and most operators who are dishonest or who are pulling a scheme wait until they receive the majority of their orders before they ship anything, assuming they ship anything. Of course, we have to get the product and have it tested before we can go through the administrative proceedings. It is oftentimes a month or more before we will receive a product, and during that 4 or 5 weeks, the consumer is still being cheated. And it would certainly help us to be able to go to that firm with the authority to purchase the product in cash at the time it comes to our attention.

The other area is recidivism. You just mentioned changing the name or the address of the firm. Under the current procedure, that is all they have to do to start again. And then we, of course, go through the investigative procedure again to arrive at another mail stop order.

Senator PRYOR. Is there any real coordination between other groups with the Postal Inspection Service? For example, what coordination between FTC or consumer groups, or the Better Business Bureau or State Attorneys General, et cetera, do you have?

Mr. NELSON. We have, of course, liaison with all the Federal agencies and the inspectors in the field work with State agencies. Another effort is, of course, periodically, we publish lists of all firms that we have obtained civil misrepresentation orders on, as well as criminal convictions. And we work with them in such efforts as the upcoming Consumer Protection Week.

That pretty much covers it, I think.

Senator PRYOR. To your knowledge, are the consumer groups or Federal or State agencies experiencing financial cutbacks or budgetary cutbacks which hamper the effectiveness in combating this fraud?

Mr. NELSON. I have no direct knowledge of that, but I have certainly heard that.

Senator PRYOR. In October 1981, I held a hearing in Little Rock, Ark., on S. 1407, the Postal Fraud Bill, and at that hearing a newspaper publisher named J. E. Dunlap from Harrison, Ark., who is the publisher of the Harrison Daily Times, testified that he reviews each classified ad himself and simply refuses to run a questionable ad. I think he has done this for 27 years, and in addition, I think many smaller newspapers in our State make it a real point to check with one another about those ads so as to avoid running them. I wonder if this is typical of a grassroots effort, or is this an exception to the rule?

Mr. NELSON. I think based on my experience, I would have to say that is an exception to the rule.

Senator PRYOR. You do not think that Katherine Graham of the Washington Post is down there, reading classified ads to make sure they are not fraudulent.

Mr. NELSON. No.

Senator PRYOR. Well, they are different situations, and I understand, but it seems like that serves as a fairly good system in some of our less-populated areas.

One final question, and then I understand Senator Melcher has questions. It is my understanding that in later testimony to come, the committee will hear of con men who set up schools for cons, where they teach the tricks of their trade to prospective cons. To your knowledge is this pretty widespread? Is this the rule or the exception?

Mr. NELSON. I would think that is the exception.

Senator PRYOR. What about, is there what you might call a "con network" who share information in this whole field and provide information to each other to assist in these fraudulent schemes?

Mr. NELSON. I have a feeling that there is, but I cannot say that with total authority. That does come up occasionally in our investigations, especially in the type cases we are talking about.

Senator PRYOR. Thank you.

Senator Melcher.

Senator MELCHER. Thank you.

Mr. Nelson, you list during the fiscal years of 1977 through 1982, approximately 1,309 false representation complaints. And then, on the succeeding page, you mention under Braswell, Inc., of Atlanta, that between July 1980 and September 1982, 138 false representation complaints were filed, involving 50 different products marketed by Braswell.

First, of all, that 138 you list under Braswell, Inc., is part of the original figure, is it not, of 1,309?

Mr. NELSON. Yes, it would be.

Senator MELCHER. How many of these 1,300-odd false representation complaints were initiated by the Postal Corporation?

Mr. NELSON. Complaints initiated—George, would you like to answer that?

Mr. DAVIS. Well, the word "complaints" as used in this statement is talking about the formal, legal complaint that is filed by the Postal Service with the administrative law judges, for the pur-

pose of enforcing section 3005. Therefore, all of the complaints were filed by the Postal Service.

Senator MELCHER. Yes, I understand that. But of those 1,309, how many of the complaints originated because a representative of the Postal Corporation apprehended the misleading misrepresentation?

Mr. DAVIS. As opposed to someone else first identifying it?

Senator MELCHER. As opposed to a citizen.

Mr. DAVIS. I could not tell you. I do not know.

Senator MELCHER. Well, the point of my question is this: First of all, I would assume that a portion of these is first observed by representatives, employees, of the Postal Corporation——

Mr. DAVIS. Yes, sir, that is correct.

Senator MELCHER. I am correct?

Mr. DAVIS. Yes, sir.

Senator MELCHER. But you do not know whether it would be half or two-thirds, or—how big of a group do you have looking at this within the Corporation?

Mr. NELSON. We have about 100 inspectors nationwide who are assigned mail fraud duties.

Senator MELCHER. Now, that is to apprehend mail fraud or to respond to a citizen's complaint?

Mr. NELSON. Yes, that is right.

Senator MELCHER. Which?

Mr. NELSON. Both.

Senator MELCHER. Both. Can you tell me whether these 100 employees are originating many of the complaints themselves; that is part of my question.

Mr. NELSON. They originate complaints themselves, based on publication monitoring programs that we have, where there is an ad that is obviously so bald that it is easy to see, like, "Take aging skin off your face in 7 seconds," or "Take this pill and increase your bust size six cups in 8 days,"—that type of thing.

There are about 40 inspectors who have assignments that relate to publication monitoring, that monitor assigned publications. I cannot tell you what percent of the complaints relate to cases brought by those inspectors from publication monitoring as opposed to those that come in the door from the citizen or the consumer.

Senator MELCHER. Is it easy for a citizen to file a complaint?

Mr. NELSON. Yes, I think it is.

Senator MELCHER. At any post office?

Mr. NELSON. Any post office, that is right.

Senator MELCHER. And the Postal Corporation employees will not think it is an oddball complaint?

Mr. NELSON. No, I certainly hope not—and we get plenty of them in, so I do not believe that is the case.

Senator MELCHER. All right. And then it is assigned to somebody of this 100. Are those people located just here in Washington?

Mr. NELSON. Oh, no. They are throughout the country.

Senator MELCHER. The consent orders or the consent decrees are, I suspect, of a nature, if you will modify your advertising, we will withdraw the complaint; is that it?

Mr. DAVIS. Yes, sir, that is the basic undertaking in the consent agreement.

Senator MELCHER. And the other step, a stop order, means that the consent agreement could not be reached?

Mr. DAVIS. That is correct.

Senator MELCHER. And how many of these 1,309—and after all, this covers 6 fiscal years—I expect it is all of fiscal year 1977 through all of fiscal year 1982—of those 1,309 false representation complaints, those are formal complaints, and they represent those after there was a certain amount of screening prior to taking any kind of an action; is that correct?

Mr. DAVIS. Yes, sir.

Senator MELCHER. Now, out of those, how many were actually prosecuted?

Mr. DAVIS. Well, as these statistics indicate, there were 542 mail stop orders. A mail stop order can only result from the completion of the entire administrative procedure.

A consent agreement can be entered into at any time. They can be entered into at the beginning of the investigation or in the middle of a hearing; indeed, they are often entered into after a mail stop order is issued. Our interest under the civil statute is to get people to stop cheating the public. We are not trying to punish anybody. If they are willing to change their advertising and go forth and sin no more, we are perfectly happy with that. We will accept a consent agreement and we will remove the mail stop order.

We are not interested in drying up anybody's business. We are just simply interested in eliminating falsity from the advertising. So the consent agreement can be entered into at any stage in these proceedings or indeed, after they are concluded.

Senator MELCHER. Well, there is a criminal penalty, however, to the statute——

Mr. DAVIS. Not under this statute. There is a separate criminal mail fraud statute that has different jurisdictional requirements. None of these statistics involve prosecutions under the mail fraud statute.

Senator MELCHER. All right. Can you inform us, then, how many criminal complaints were pursued?

Mr. NELSON. I have 3 years' statistics with me. In fiscal year 1980—I will give you convictions, if that will suffice—we convicted 1,370 mail fraud offenders; in fiscal year 1981, 1,046; and in fiscal year 1982, 966.

Senator MELCHER. Well, in effect, the criminal side of this is bigger than the civil side, then?

Mr. NELSON. Yes, that is right. I might expand on my remarks a little earlier, when I mentioned 100 inspectors. We have our fraud work categorized. Category 1 is what we consider the most important. That includes frauds against the elderly, frauds against the Postal Service, and a few others. We have 100 inspectors, roughly, who work only the category 1 fraud work. The total fraud work encompasses about 350 inspectors.

Senator MELCHER. Now, if I am an elderly person—soon getting there, by the way—and I receive through the mail a fraudulent document, I would have no difficulty asking you to examine it,

asking the Corporation to examine it—or would you insist that I first approach an attorney—now, I am talking about a fraudulent—well, let me give you a for-instance—a fraudulent document, say, in a real estate deal, and I suspected there was fraud involved. I received a document in the mail from somebody I am doing business with, but I have reason to believe that there is fraud and misrepresentation. Would I have difficulty getting assistance from the Corporation?

Mr. DAVIS. It depends on the nature of the assistance, I think. We do receive, among the thousands of complaints we receive every year, complaining about mail fraud, a lot of complaints that are not within the jurisdiction of the Postal Service. They are, perhaps, misunderstandings between parties, or they are perhaps actual cases of fraud, but fraud addressed really on a local or State basis under civil enforcement in the courts. They do not raise themselves to the level the Supreme Court has established for viable prosecution under the postal fraud statutes.

So sometimes our answer to an inquiry is not a candid, complete, analytical review of the document. Rather, it is a statement that says, "Regrettably, this does not concern proper enforcement of the postal statutes."

Senator MELCHER. Well, the proper avoidance of crime, of course, is punishment for those guilty of it, and one example sometimes saves a thousand people from a similar situation.

I am reassured by the fact that you are not only approaching this from the civil side of it, a stop order, or a consent agreement, but also from the criminal side, and I encourage you to be active there.

Thank you very much.

Senator PRYOR. Thank you, gentlemen. We appreciate your testimony this morning.

Mr. NELSON. Thank you, and it was our pleasure to be here.

Senator PRYOR. We will now ask for the third panel to come forward, which consists of Trooper Malcolm Murphy, Mrs. Willis, and Elaine Biddle.

Mrs. Willis, we appreciate you coming, and I understand you have your daughter, Mrs. Biddle with you. And Malcolm Murphy is a State trooper, I understand, with the Pennsylvania State Police.

The committee's survey of consumer fraud has determined that phony home repair schemes are those that are most frequently perpetrated against the elderly today.

Our next witness is Edna Willis, an 80-year-old resident of Concord, Pa., who was defrauded by a group of traveling repair cons, and we welcome her this morning and her daughter, Elaine Biddle, of Pennsylvania, and Malcolm Murphy, once again, from the Pennsylvania State Police.

Mrs. Willis, for the record, is an 80-year-old resident of Concord, Pa., who, along with her husband, was victimized by a home repair fraud. Because her vision is poor, Mrs. Willis' statement will be read by Mrs. Biddle. Both women are accompanied by Mr. Murphy, of the Pennsylvania State Police, who conducted this investigation in the Willis case.

In many respects, the Willis case is typical of home repair fraud, which is among the group of frauds that the committee found to be most frequently perpetrated against elderly people.

This case is unique, however, in that some level of restitution was ultimately achieved. And we would, Mrs. Willis, like to hear from you at this time. And Mrs. Biddle, will you read her statement, please?

STATEMENT OF EDNA WILLIS, CONCORD, PA.; ACCOMPANIED BY ELAINE BIDDLE, DAUGHTER; AND TROOPER MALCOLM MURPHY, PENNSYLVANIA STATE POLICE

Mrs. BIDDLE. Good morning, Mr. Chairman.

My name is Elaine Biddle. I am speaking for my mother, Edna, because her vision is poor. She is 80 years old, and she has lived in Pennsylvania all her life.

Last year, on June 28, 1982, her husband was sweeping the driveway when three men pulled up in an old pickup truck. They said they happened to be in the neighborhood and noticed that their driveway needed to be resurfaced. Since they were already in the area, they offered to do the job at a bargain rate of $9.

"My husband and I talked about it, and because it seemed like such a good deal, agreed. Five minutes later, two of the men knocked on our door, saying that they had completed the job and demanded payment. When I started to write out a check for $9, one of the men stopped me. 'No,' he said, 'you have made a mistake. That is $9 a foot.' He insisted that I write a check for $320.

"Because the two men were standing there on either side of my husband, I was afraid of what they might do to him, so I wrote the check. You have no idea how helpless I felt when I was writing it but I did it to save my husband's life. No sooner did I hand them the check, than they ran out the door. I said to my husband, 'I think we have been robbed.'

"A neighbor got the truck license number and called the State police. I called the bank to stop payment on the check, but they were too quick for me. Within 5 minutes, they had already been there and cashed the check.

"The whole thing, from the time they arrived to the time they left took 45 minutes. When I looked at the driveway afterward, I found all they had done was to spray kerosene or some kind of oil on the surface. It was so slippery that you could not even walk on it. My daughter had to get some detergent, and we washed it away. Later, my husband and daughter bought some blacktop and resurfaced the driveway themselves. It cost us about $50.

"Because of the work of the State police, we received a full restitution from a relation of one of the people who had ripped us off. But my life has not been the same. We had lived for more than 50 years in the same house. We had never had any trouble. We always left the doors open and were not afraid. After this happened, I had nightmares. I was afraid the men would come back and punish us for turning them in. My husband was upset. We began locking our doors.

"They took advantage of us because we were too trusting and because of our age. They knew we could not fight back. I think it is

terrible. They could never have gotten away with it with younger people.

"I hope my appearance here today will help someone else avoid the kind of thing that happened to me. I will be glad to answer any questions you may have.

"Thank you."

Senator PRYOR. Mrs. Willis, we do appreciate you coming this morning.

First, why did you feel compelled to write the check for $320 when you knew that these men did not deserve it?

Mrs. WILLIS. Well, we did not feel that they did. We just thought they were going to do us a good turn. When they said $9, I said to my husband, "Why, we can't go wrong." So, when I went to write the check out, he said it was $320. And I said to my husband, "We have been robbed." That was it.

Senator PRYOR. And at that point, did you have a feeling of fear of these individuals?

Mrs. WILLIS. Well, we have had a fear ever since.

Senator PRYOR. Did you feel that if you had not written the check that you may have been subjected to some bodily harm?

Mrs. WILLIS. Well, they were gypsies, is what they were. One was standing on one side of my husband—who is 82—and the other was standing alongside of him. And if I had not written the check out, I think they could have knocked him over and scared us, you know. So, I wrote them the check.

Senator PRYOR. So, out of fear, you wrote the check?

Mrs. WILLIS. Out of fear, yes.

Senator PRYOR. We can certainly understand and appreciate that.

You called the bank, I understand, immediately after——

Mrs. WILLIS. And they had just left the bank when I called.

Senator PRYOR. They had raced to the bank after you had written the check.

Mrs. WILLIS. Yes; the bank is only just a few feet from us.

Senator PRYOR. I see. And, Mrs. Willis, I understand that you and your husband were victimized by 2 of the 10 most harmful frauds identified by the Aging Committee's survey. Is it a fact that you were subsequently also ripped off by a certain insurance fraud or a scheme of that nature, and if so, we would like to hear about that particular situation.

Mrs. WILLIS. That was a medicare condition. He tried to sell us insurance for medicare. We took it out—I forget how much I gave him, but I paid him a downpayment on it. We never received it or heard from them since.

Senator PRYOR. Did they knock on your door and sell it door to door, or was it through the mail?

Mrs. WILLIS. No. It was door to door. They came to the door.

Senator PRYOR. It is my understanding that it was possibly in the neighborhood of some $800 that you may have paid for the policy?

Mrs. WILLIS. That is right.

Senator PRYOR. And that subsequent to that, you or your husband, Mr. Willis, was admitted to the hospital and told by the hospital that it was a worthless policy—is that correct?

Mrs. WILLIS. Yes; that is right.

Senator PRYOR. I would also like to commend our friend, Malcolm Murphy, this morning, from the State police. I would like to ask you, Mr. Murphy, how you became involved in the case of Mrs. Willis?

Mr. MURPHY. Yes, Senator, I am a criminal investigator for the Pennsylvania State Police. Our barracks are located in Philadelphia, Pa.

On this particular day, we assigned a patrol officer in the area where Mrs. Willis lives to investigate the initial complaint, and as a result of what that officer did, the case was eventually turned over to me within a short period of time—in fact, I think, later on that afternoon.

The officer, after interviewing Mrs. Willis and neighbors, went to Southeast National Bank and determined that the person had been there and had cashed the check. He also made a determination, by talking to the teller, from the physical description, that the person used a Delaware State operator's license as identification, and that number was available to the patrol officer.

I got involved in the investigation and worked with the Delaware State Police in trying to locate this person. Within 2 days, I filed criminal charges against him in the Commonwealth of Pennsylvania. I notified the Delaware State Police that he was wanted and that we would extradite for this crime.

I was informed by the Delaware State Police that the address that was listed on the driver's license was a nonexistent address. In fact, I believe it was a vacant lot, if my memory serves me. That, of course, initiated another investigation by the Delaware State Police to determine how he had gotten a driver's license sent to a vacant lot, how he would have achieved that. At that time, the Philadelphia Inquirer newspaper, in checking for the police news, became involved with us, and we gave them the information concerning this scam. We then obtained a lot of press coverage, and the TV stations got involved, and it was getting a lot of coverage in southeastern Pennsylvania.

I was then approached by a confidential source in Delaware County, who stated that he had talked with the leader of this particular group.

Senator PRYOR. In other words, it was an organized group that had conned Mrs. Willis and her husband?

Mr. MURPHY. Yes, sir, very much so.

The intermediary, or confidential source, informed me that they were concerned that the State police were involved in the investigation. They stated that they did not know they were operating in a State police area—which tends to make us feel good—and that they were willing to make restitution and offer an apology to the Willises.

I discussed this with the district attorney in Delaware County, and I felt that we could accept the full restitution and the apology without a compromise. There were some questions about testimony, about trial procedure, and going on with this case, and the age of the Willises, and we thought that maybe justice would be served in accepting the restitution and the apology.

We also went to the leader of this band and, of course, in interviewing him, we ended up seizing a vehicle from him that was

wanted in the State of Texas for a similar crime. However, the determination could not be made as to whether or not he owned the vehicle; he had it in his possession. Ultimately, the restitution was made to the Willises, and the charges were withdrawn in this case.

Senator PRYOR. Mrs. Willis, we want to thank you very much for your statement, because I think this is happening so many times, every day, across our country, and it is really pretty rare to have someone willing to come forward and state exactly what happened to them. I think testimony like this will help prevent other people from being victimized in the future, as you and Mr. Willis have been victimized in the past.

We thank you, Mrs. Biddle, and we thank you, Mr. Murphy, for coming and sharing your time. I know how important that is, and you have performed a real service, not only for the Willises, but for all of us, and for all consumers who may be victimized, may be subjected, to this type of victimization.

So we want to thank all of you.

Mrs. Willis, would you care to say anything else?

Mrs. WILLIS. Well, I just want to say we had lived there for 50 years, and we had never locked the doors. We used to go and do our shopping and come back and just open the screen door and come in. Nobody had ever been in there.

Senator PRYOR. I will bet you lock the door now——

Mrs. WILLIS [interrupting]. We lock the door now, yes.

Senator PRYOR [continuing]. Because of the fear that you must feel, because on two occasions, now, you have been victimized by people who have actually come to your home.

Mrs. WILLIS. That is right.

Senator PRYOR. Well, I was just about to apologize that your Senator from Pennsylvania and the chairman of this committee was not available, but he has returned, and she has been a very fine witness, John, and performed a real public service.

Chairman HEINZ [resuming chair]. Senator Pryor, let me thank you for chairing the hearing in my absence on the floor.

Mrs. Willis, we welcome you to this committee. I am sorry I did not hear all of your testimony. But I do want to put in the record the articles from the Philadelphia Inquirer of July 7 and 9, 1982, that states with a great deal of accuracy, as I understand it, and a good deal of compassion, the situation in which you found yourself last year.

[The newspaper articles referred to follow:]

[From the Philadelphia Inquirer, July 7, 1982]

VICTIMIZED—AN OLD DRIVEWAY-REPAVING SCHEME COSTS ELDERLY COUPLE $320

(By Larry Lewis and Robert McSherry)

Edna G. Willis' 80-year-old hand trembled as she filled out a $320 check to get the two men who were standing over her 82-year-old husband out of her home.

The third member of the itinerant driveway-resurfacing company, which had pulled in off the highway less than 30 minutes earlier stood outside by a blue pickup truck with pumping apparatus in back.

The strangers arrived midmorning 9 days ago at the Willises' home off Wilmington Pike on the Delaware County line in Concord and struck up a conversation with John Willis, who was sweeping his driveway. They offered to repave the parking area for $9, got the Willises' approval for the bargain-rate work and sprayed a dark liquid on the drive.

Then they said that the Willises had misunderstood, that the charge would be $9 a foot. When the owners objected, they found themselves cornered in their living room by two men who Mrs. Willis said were making every effort to be intimidating.

"You have no idea how helpless I felt while I was writing that check, but I did it to save my husband's life," said Mrs. Willis, who bought the one-story stucco house 52 years ago, installed plumbing and electricity over the years and now tries to maintain it on the social security checks that she and her second husband of 19 years receive. "They could have knocked him over to get what they wanted."

Consumer-fraud experts say the Willises were victimized by a driveway-repaving scheme that can be traced back at least 50 years. Lately, authorities say, the con game has taken a more vicious turn because it is directed at very old people in small, country retirement towns.

"It happens every spring and summer," said Trooper Malcolm L. Murphy of the Franklin Center State police barracks, who is investigating the Willis case. "I think other people have had it happen and they are too embarrassed to report it."

In recent weeks he said, citizen inquiries to the State police about men offering to pave driveways lately have been increasing.

Mrs. Willis had the money in her bank account because, she said, she was saving to pay for a second trip to the hospital at the end of July to try to find out why she has felt ill and unable to eat for days on end.

"I had just paid my first hospital bill—$1,000—the day before," she said. "My husband is worth more to me than any amount of money, but I could have used the $320 for the hospital. Now I don't know what I'm going to do. I intended to stop payment on the check, but they were too fast for me."

The men cashed the check in less than 5 minutes. They drove about 500 yards up Wilmington Pike to the Southeast National Bank of Pennsylvania branch and used a Delaware driver's license as identification for the transaction.

State police have questioned one man in connection with the money taken from the Willises, but no one has been charged.

"The price has gone up," said Elaine Halford, executive vice president of the Better Business Bureau of Eastern Pennsylvania. "It happens every spring and summer, but usually the amount of money is smaller."

Ms. Halford said studies of the scheme revealed that it began in the 1920's when a family in Florida began to roam north during the warm months, overcharging people for shoddy home-improvement work—painting, roofing, and driveway resurfacing.

That clan did so well, she said, that they encouraged imitators.

"Now they're working in the suburbs because a lot of elderly, retired, trusting people live there," she said.

"Spotting an old person is like a gift from heaven to them. They're preying more and more on senior citizens. We get as many as 30 or 40 calls during the 3-week period at the beginning of summer.

"It's the same people over and over, and they know just how long to stay around before it gets too hot with the police. There's really no recourse. Once they're gone, it's too late."

She said her office recorded one incident several years ago in which a family lost $1,600 to a variation of the driveway fraud.

"Some men showed up and said they were going to paint the family's house," she said. "After they got their money, they sprayed the house with one gallon of paint mixed with 30 gallons of water. They were only there 1½ hours. When they left, they had paint on windows, fences, and neighbors' cars."

"This is a scam that's been going on every spring in all of the 10 years I've been here," said John E. Kelly, deputy attorney general in charge of the Bureau of Consumer Relations' Philadelphia regional office. "It's very, very difficult to do anything to stop it unless you catch these men right in the act."

Even then it would be difficult to prove fraud, he said, because there would have to be no doubt that the men took more money than they were supposed to get for the work while not providing materials they had promised.

The itinerants often use second-hand oil out of cars and mix it with soot to cover the driveways, Elaine Halford said, and it washes off with the first rainfall.

"They use coal tar mixed with drained oil," said an operator of a local paving company who did not want his name used in conjunction with the shady practice. "It makes a very cheap mix. The drained oil eventually will make the driveway deteriorate."

"When I worked in western Pennsylvania several years ago, the farmers would contract with these men to work on the barns," Murphy said. "They would pay

them up to $1,000. That's a lot of money to pay to have crankcase oil poured on your barn roof."

No one is sure what the three suspects used on the Willises' driveway, but it turned the black asphalt brown, and there now are fine, spider-web cracks in the surface.

"My husband and a neighbor washed it off a couple of times with soap and water, and we hope it's all right." Mrs. Willis said.

She said this was the first time that she or her husband, who is retired from Strode's scrapple company in West Chester, had had to call the police to handle any difficulty for them.

"We've never had any trouble," she said. "We've saved our money. We're independent. We don't have to depend on anybody for anything. And now this.

"Those men had it all planned. I'm upset. My husband's upset. I had a dream that they came back here to punish us because we had them arrested."

Mrs. Willis said she knew that the men took advantage of her husband because he is too trusting and less able, because of his age, to fight back.

"I think it's terrible," she said. "They know they couldn't get away with it with younger people."

One more part of the episode sticks in Mrs. Willis' mind.

"As the man took the check and was leaving," she recalled, "he said; 'I'm sorry you're sick. I'll have my grandmother pray for you tonight.'"

How could he do that?"

[From the Philadelphia Inquirer, July 9, 1982]

$320 Returned to Victims of Repair Scheme

(By Larry Lewis and Robert McSherry)

A retired, elderly Delaware County couple who lost $320 to a driveway-repaving con game 11 days ago got their money back yesterday, along with an apology.

State police investigators said John, 82, and Edna Willis, 80, of rural Concord, Concord Township, accepted an offer of restitution from an Upper Darby family related to at least one of the three men who the couple said had intimidated them into signing a $320 check as payment for shoddy driveway-resurfacing work. The couple said they had been saving the $320 for the wife's hospital treatment.

Trooper Malcolm L. Murphy of the Franklin Center State police barracks, who investigated the June 28 incident at the Willises' home, said an intermediary who asked to remain anonymous had delivered the money and assured the couple that the entire affair was "a mistake."

The Willises agreed that they would no longer pursue possible prosecution in the case, Murphy said.

"We contacted the victims and told them the decision was theirs," Murphy said. "We told them they still could pursue the prosecution. The normal State police policy is to arrest rather than make an attempt at restitution. But they indicated they would prefer to accept restitution in the full amount. There also was an apology that this all had been a misunderstanding.

"In this instance, restitution was the appropriate method of disposing of the case because of the age of the victims, their financial situation, and the medical condition of one of the victims. They need the money more than they need their day in court."

The Willises said the problem arose when three strangers appeared at their modest, one-story home off Wilmington Pike on the Delaware County line one morning almost 2 weeks ago and offered to repave their driveway for $9. After the work was completed, according to the couple, the men said they meant that the charge would be $9 per foot and that they were due $320.

Edna Willis wrote a check for that amount just to get the men out of her home because they were standing menancingly over her husband, she said.

The couple saved the $320 from their social security allotments because Mrs. Willis is scheduled to return to the hospital at the end of this month to see whether doctors can determine why she has felt ill and unable to eat for days at a time.

"My husband is worth more to me than any amount of money, but I could have used the $220 for the hospital," she said soon after the incident.

Consumer-fraud experts say the Willises had been taken in by a scheme that can be traced back at least 50 years, and involves overcharging for poorly executed

repair work. In this case, police said, the itinerant repavers apparently poured used motor oil mixed with cheap coal tar on the Willises' driveway.

The couple told police that the three men were driving a blue pickup truck with pumping equipment in the back.

Trooper Murphy said the men had cashed the Willises' check at a bank branch near the couple's home, and that they used a Dover, Del., driver's license bearing the name "Frank Mitchell" as identification for the transaction.

Murphy said a check on the license led to the Upper Darby family, which he said does repaving work. He said a blue pickup truck was found there.

During questioning, Murphy said, a family member said that the Mitchell suspect for whom police were searching had gone to live in another State.

This week, a man acting on behalf of the Upper Darby family approached State police with the offer of restitution to avoid further trouble, Murphy said.

Chairman HEINZ. I have one question about the people who defrauded you. Were these gypsies? Were these fly-by-night types of operators?

Mrs. WILLIS. Well, that is what they looked like to me, gypsies. They had big moustaches that hung down around their mouths, and they were sort of dirty looking and careless looking.

Chairman HEINZ. Not terribly trustworthy looking?

Mrs. WILLIS. They just looked like bums.

Chairman HEINZ. And I gather they acted like bums, too, after they——

Mrs. WILLIS. Yes; that is right.

Chairman HEINZ. Well, I will tell you, it is my view that when we catch people like that, we ought to lock them up and throw the key away for a long time. They keep coming back; they keep trading information. They keep even passing your names, and others like you, along to some other con artist or bunco scheme person. They prey on some of the most valuable members of our community by taking them, and just as they did in the case of you and your husband, literally, stand them up against the wall and shaking them down. And that is not too harsh a term to use here—these are shakedown artists.

Mrs. WILLIS. And then, we got an awful lot of publicity, which we did not like. They had our pictures in all of the papers, and everybody all around was calling us to see what had happened.

Chairman HEINZ. And that is embarrassing, isn't it?

Mrs. WILLIS. And that was embarrassing and upsetting.

Chairman HEINZ. Every single instance of this kind of fraud involves much more than monetary loss. It, in the case of your situation, involves a considerable amount of not only embarrassment, but as I understand it, you had put some money aside so that you could have another visit to the hospital—isn't that correct?

Mrs. WILLIS. That is correct.

Chairman HEINZ. So, we literally are having senior citizens' lives and health being put at risk, when people come along and prey on them as this group, this gang of gypsy con men and shakedown men did in your case.

I have no further questions.

Senator Melcher, did you have an opportunity to ask questions?

Senator MELCHER. No; I have no questions. I thank the witnesses for their testimony. I think it was very helpful.

Chairman HEINZ. Mrs. Willis, I want to particularly thank you. I apologize that I was not able to be here to introduce you. We are very honored that you were willing to come down, all the way from

southeastern Pennsylvania, and that you were willing, in spite of the fact that it is not very enjoyable—as you mentioned, it is embarrassing to come and have to get any more publicity on something. But I salute you, because your testimony will be helpful to this committee and to the Congress in devising ways and means and stimulating our law enforcement people to do a better job of protecting our senior citizens. We do not want next year or the year after to have another case like yours. I think it is a very tragic thing to have happen to anybody.

We are very, very grateful to you. Is there anything you would like to add?

Mrs. WILLIS. No; I just wanted to say that at one time I said to my husband, "Well, it did not pay us to stint and save our money, because now it is all gone," if you know what I mean. But then, when we got it back, we felt better.

Chairman HEINZ. Well, you have made all of us feel a good deal better by your coming here, and we thank you for all the efforts involved.

Mrs. WILLIS. It has been an enjoyable trip so far.

Chairman HEINZ. Thank you very much.

Would our next witnesses come forward? I am informed by staff that Lemmie Wilson, an Ohio-based con who ran a "school for scoundrels," and Police Detective Garver have not arrived. If they do arrive by the end of the hearing, they will be provided an opportunity to testify.

We will now proceed with our final panel, which is Clair E. Villano, Terry Getsay, and Stephen Nicks.

Let me say before you start that this panel clearly consists of State and local consumer agency and law enforcement specialists. We are glad to have Clair Villano, president of the National Association of Consumer Agency Administrators; Terry Getsay, a criminal intelligence analyst with the Illinois Department of Law Enforcement; and Stephen Nicks, the director of the Office of Consumer Protection, Wisconsin Department of Justice.

And I might add that much of the battle against consumer fraud is indeed being waged by our State and local agencies, and had it not been for the cooperation of you, and people like you, on our survey to some 1,300 individuals with the same kind of interest in consumer protection and justice that you have, we would not have been able to have the fine informational base that we are going to be making available to our colleagues and that will be made available to the public today.

So, we welcome you to our hearings. We thank you for coming the distance you have, and we look forward to your statements.

Ms. Villano, would you like to be our first witness?

STATEMENT OF CLAIR E. VILLANO, DENVER, COLO., PRESIDENT, NATIONAL ASSOCIATION OF CONSUMER AGENCY ADMINISTRATORS

Ms. VILLANO. Thank you, Mr. Chairman.

I run the consumer fraud unit for the Denver district attorney. We are the largest consumer protection agency in the Rocky Mountain area. When I tell you there are 11 on staff, you will get an

idea of the scarcity of resources when it comes out west of the Mississippi in doing consumer protection.

I am here as the president of the National Association of Consumer Agency Administrators—NACAA. These are the people who head the local agencies—city, county, occasionally State, agriculture departments, and other State offices, and we do have some attorneys general offices in our association.

We are the people who are eyeball-to-eyeball with the constituents, the consumers, the people who have problems, and the people who would like to see some relief.

Today, we are focusing on the older American as a special targeted population of fraud. I would like to introduce a thought that has not been expressed, which is, I do not believe their victimization is merely a function of calendar age. I think the people who are older Americans today, if we consider that they were raised and grew into adulthood pre-1920, had a world view and psychological responses that seem eons ago; these are people who trust, these are people who care about their homes, these are people who are very, very responsible. And so, I will not say it is because of a certain calendar age, but perhaps of a certain era in which they began their transactions with the business community.

Ironically, just as we at the local level are becoming tremendously more impressed with the number of seniors who are victims, our resources are shrinking. This is no news to you, of course. But when I talk about resources at the local level, please in Washington, understand--I am not talking millions, I am not talking hundreds of thousands—I am talking about offices for population bases of anywhere from 170,000 to 600,000 people who are running on $70,000 budgets. That may be three or four people. A little quick division tells you we have people working for $10,000, trying to do consumer protection, good people all, trying very hard. The problem we have, and what we hear from Washington increasingly is, "Oh, you people at the local level, you can do it better." We think we can do it better, but we cannot do everything, and we certainly cannot fill every gap and every responsibility that is being handed down to us.

I would like to tell you very briefly about three complaints that have come across my desk in the last 3 months. It will give you, I think, a flavor of the individual kinds of complaints we handle as opposed to the large-scale patterns, the mass complaints involving the hundreds of thousands of dollars, that naturally belong to the national agencies.

In June, an elderly Aurora couple read an ad: "Would you like an extra $1,000 per month part time? We will help you start a home print shop, all supplies, for $1,250, training included." Well, they lived on a pension and social security, and they desperately needed some more money, so they did, in fact, invest $1,250. They got a discontinued model press, improper setup, no training, and a lot of grief. Six months later, they wrote to us: "We haven't made anything above expenses. We have taken in $142"—a far cry from the $1,000 per month they thought they might be able to make. "Please help," they said.

Luckily, we were able to use our civil powers and get the attention of the man who sold them this investment. We did get them more training, and I am happy to say that ended happily.

An elderly Denver widow was called by the furnace company who had installed her furnace a few years earlier. They told her they were on the verge of bankruptcy, and they wanted to be sure she was protected with a warranty. The furnace man arrived, crawled under the house—where she was unlikely to go—and told her, unfortunately, all her lead gas and water pipes were leaking, rusting, and needed to be repaired—$5,000. He wanted half upfront, but would take her $100 check until the next day, when she could get to the savings and loan to withdraw $2,500. Luckily, she talked to a neighbor. They called Public Service, who crawled underneath, discovered there was nothing wrong with the pipes, and called us. We were there the next day, body mikes in hand and such; the gentleman was arrested on the spot when he tried to get the money from the lady, charged with felony theft from the elderly, which is a special class of crime in Colorado. The case has been bound over, and the trial is pending.

Because furnace fraud is such a problem among the elderly, we have put out a special brochure. I want to tell you right now, I now know that brochures do not solve anything. They make me feel better. We try. We distribute them. But another brochure is not the answer to prevention.

And the last case, an elderly widow with a diabetic son to care for was contacted by one of these boiler room operations out of Florida. She was convinced, through this glossy type of material, to invest $3,500 in strategic metals. Needless to say, within 1½ years, the firm's phone was disconnected, she had not heard from them. This also had a happy ending, thank goodness. We got in touch with the Commodity Futures Trading Commission and the New York district attorney. She got part of her money back. The lesson cost her $500.

Well, that is a little flavor of the kinds of cases that we handle.

What are the implications at the local level? Unlike most law enforcement agencies, I think I can speak for all our members when I say that our filings are often our failures, because when we file a case, whether it is criminal or civil, we are playing catchup. The harm has been done; the money usually is not restored. The damage to the psychological sense of well-being has occurred and is rarely made whole again, and you have had good testimony to that.

The law manipulator relies on the fact that the older American often will not know they have been victimized. If they do know, they often will not report, and if they do report, they are often very reluctant—indeed, often unable—to testify in a court hearing.

The law manipulator knows this. They also know the fragmented sense of law enforcement at the local level; they know tightened resources; they know how to keep a low profile, how to keep on the move. The asphalt people you heard about are very common. It sounds like the Williamson clan to me; we chase them around Colorado every spring, and unfortunately, usually chase them into Arizona, and Arizona chases them on to the next State. But, at any rate, they are out there, and they are making good money at it.

OK, enough about problems. What are we going to do about it? I am convinced that avoidance can be a learned response. I am convinced that we can prevent these. If people do not sign contracts, do not invest, do not send in the mail order, these folks will not be in business. But we are not going to do it by a brochure.

Our association has been working with the American Association of Retired Persons to see if we cannot put together a recruiting, training, and evaluation cookbook, a manual for local agencies to use to get older Americans from their community to be peer counselors, peer teachers of how to avoid these problems in the first place. You know, it does not do much good for some 30-year-old to be lecturing to older people, but someone from their own group who can just sit down and talk, do the advance warning systems to avoid these problems, I am convinced it would work.

We do not want Government for this. Please, do not think that I am asking for that. We are hoping we can get some corporations and foundations, perhaps, to fund this effort. You would probably say, "Why don't these agencies just do it themselves? My God, they must know the need is there." How can you ask Cincinnati's Consumer Protection Office, with three people, to take on a massive effort like this from the start, even though they know the need is there? Or the Colorado Attorney General—five people to do consumer protection for the entire State?

That is why we think if we can put together a cookbook, it might help. We are also trying to put together a "How To Do Cable Programing," that will appeal to the older American, maybe in a soap opera format, maybe in a question and answer, maybe a spinoff of the Phil Donahue type of thing. We think there are a lot of possibilities for education.

I would like to say that the Federal efforts do set a tone and they set a standard, but they are not a cure-all. I would like to give my compliments to the postal inspectors. In the 7 years that I have worked with the economic crime project, with the attorneys general, and with NACAA, if there is one group of truly cooperative Federal law enforcement people, it is the postal inspectors.

Now, I am going to turn it over to people with a different perspective. But on behalf of the local people, the people down there in the trenches, thank you for letting us come to add our testimony.

Chairman HEINZ. Thank you for being in the trenches, Ms. Villano.

Mr. Nicks.

STATEMENT OF STEPHEN J. NICKS, MADISON, WIS., DIRECTOR, OFFICE OF CONSUMER PROTECTION, WISCONSIN DEPARTMENT OF JUSTICE

Mr. NICKS. Thank you, Mr. Chairman.

My name is Steve Nicks, and I am the director of the office of consumer protection at the Wisconsin Department of Justice.

I appreciate the opportunity to share a State's viewpoint of consumer protection, and some background, I think, is necessary.

In Wisconsin, there is a very nice paper symmetry of consumer protection. We have concurrent jurisdiction with the local district

attorneys in the 72 counties who have jurisdiction over consumer fraud to handle local matters. The attorney general's office, where I am, has jurisdiction to handle statewide matters. We look to the Federal agencies, the FTC, and Postal, to handle those things of nationwide importance, or interstate matters.

Unfortunately, in practice, this symmetry breaks down dramatically. At the local level in Wisconsin, the local district attorneys are understaffed, underpaid, and almost totally concerned with traditional, criminal-type activities. I do not blame them for this, and that is certainly where their priorities should lie.

At the Federal level, I share Clair's thoughts with respect to the Postal Service as opposed to the Federal Trade Commission, which we have seen in the last 1½ or 2 years, to have almost totally absented itself from the litigation efforts in consumer protection. What this means to us in Wisconsin, at least in the attorney general's office, is that we are in the middle of a sandwich of inactivity, and unfortunately, us in the middle—the meat, if you will—is getting smaller with respect to an increase in workload. Last year, our number of consumer complaints was up 9 percent, and our budget was down a real 12 percent. So from the standpoint of what we are faced with on the two ends and what we have in the middle, we have a real problem meeting the needs of the Wisconsin citizens.

I agree with the main findings of your study and applaud the committee for looking into this area. I will not go into any further horror stories or examples of complaints. I have submitted some written testimony, which I would like to be made part of the record.

Chairman HEINZ. Without objection, your entire testimony will be made a part of the record.[1]

Mr. NICKS. Thank you.

I would like to briefly talk about three issues—and as often happens in these hearings, as you sit through the first 2 hours, you tend to change what you came to say, and I think that is what has happened to me.

I would like to categorize my brief comments along three lines: First, the forgotten issues; next, I would like to talk a little bit about the Federal Trade Commission, and next, about Postal.

In the forgotten issues area, when we, either State or local individuals, are dealing eyeball-to-eyeball with the consumers who have been defrauded, who have lost money, the important thing to these people is not any fancy enforcement action or any flashy court proceeding—it is, do I get my $10 back, do I get my $50 back, do I get my $3,000 back. In Wisconsin, at the attorney general's office, we received around 16,000 written consumer complaints last year, and were able to mediate a large portion of those and, through both mediation and our litigation efforts, return $850,000 to Wisconsin citizens. At the Federal level, and a lot of other places, I do not see any real concern for a person losing $5, $10, $15. If you are talking about complex economic analyses and whether you should start an action or not, you certainly are not going to start actions over $5, $10, $15. But I think we owe these citizens something with respect to that.

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[1] See page 64.

This is especially so in the mail order area, that I will get to when I discuss the FTC.

The last issue in the forgotten issue category is speed of enforcement. We have had two recent cases in Wisconsin that show that when you are dealing with elderly issues in a litigation sense, in a law enforcement sense, special problems occur. We just concluded an action against a seller—unfortunately, from Illinois—of very fancy therapeutic beds for $1,300, sold door-to-door to elderly people; the kind of electric beds that go in all kinds of positions and have all these good health effects, et cetera. Our problem in that case—it was a very unusual case in that we went from start to finish in only 6 months—the real problem was that before we finished it in 6 months, two of our best witnesses had passed away. And from the standpoint of how you would have to manage one of these actions and how speedily you have to conclude the action, when you are dealing with elderly citizens, it is very difficult.

We have two more investigations going in the preneed sale of funeral merchandise by nonfuneral directors—door-to-door casket sellers, if you will. The investigation right now is becoming very difficult. This is a case I am personally working on. The investigator has interviewed 22 people who bought these things, and fully 35 percent of them have very little recollection of what happened no more than 3 or 4 months ago. So it is very difficult to build a case because you do not get any specifics from individuals.

I will zip along, since I see the red light going.

In the FTC area, we have been very active in Wisconsin with respect to mail order nondelivery. The FTC does indeed have a rule, and Wisconsin patterned a special statute after the rule, to put some teeth into the enforcement. I was somewhat bemused by Chairman Miller's testimony this morning that it is a priority enforcement thing with the FTC with respect to the mail order rule. We happen to have judgments against two major California corporations that did not deliver literally thousands and thousands of items to consumers nationwide. They are both, unfortunately, in bankruptcy. We called the FTC to find out what they were doing, because the FTC certainly was intervening in that bankruptcy, trying to figure out what is going on. And the word I got from the staff person in charge of mail order at the FTC was—he was very apologetic and said, "You know, we really only have two halftime people dedicated to enforcing the mail order rule." So I was very interested in how the Chairman sets the other priorities in the department and what kind of staff they dedicate to that.

Last, although I have not seen S. 450 in the postal area that you mentioned, Senator, if it cures some of the problems that the postal inspectors spoke to, the closing up shop and starting over problems, it would be truly appreciated. In the work-at-home area, the kinds of things that you see in the little classified ads, like, "Make $106.80, working 2 hours a day at home—send a self-addressed, stamped envelope"—Senator Pryor spoke to that, in terms of getting to the newspapers. He spoke about an Arkansas newspaper editor who screens his classified ads to just refuse those kinds of ads. I think that is a super idea. We tried it about 3 weeks ago and sent 500 letters from my office to all newspapers in the State of Wisconsin, saying, "With respect to work-at-home schemes, here

are the symptoms of a bad ad. We have never seen one of these things make any money for you." And it has worked wonderfully.

Chairman HEINZ. Excuse me. Could you send us a copy of that for our record?

Mr. NICKS. We sure can, Senator. I will.

Chairman HEINZ. Maybe we could get the Federal Trade Commission to send them out. [Laughter.]

[Subsequent to the hearing, Mr. Nicks submitted the following letter.]

BRONSON C. LA FOLLETTE, ATTORNEY GENERAL • WISCONSIN DEPARTMENT OF JUSTICE
121 WEST WASHINGTON AVENUE

OFFICE OF CONSUMER PROTECTION • P.O. BOX 7856 • MADISON, WISCONSIN 53707 • TELEPHONE 608/266-1852

January, 1983

Dear Wisconsin Editor:

Recently there has been a spate of ads in Wisconsin papers concerning work-at-home schemes. These classified ads, which are drawing the attention and sometimes the participation of many Wisconsin consumers, are generally worded similar to the following:

> "$106.80 daily earnings working three hours a day at home. Your earnings are fully guaranteed in writing. For complete details and applications, send self-addressed stamped envelope to..."

In my experience of reviewing subsequent complaints from consumers who responded to these ads, they merely are invitations for your readers to spend $15 to $25 to learn how to place similar ads. Simply put, it is a pyramid scheme in which consumers rip-off other consumers. As you can imagine, it just doesn't work and almost all people end up losing on the deal. Only the original promoters (not those placing or responding to local ads) make money. Other variations on the scheme include the standard envelope stuffing plans and making craft items for resale in the home. The results are the same.

High unemployment has increased the susceptibility of Wisconsin consumers to the promise of work-at-home income. I urge all of you to adopt a policy of refusing these ads. The key elements to look for as you screen the ads are the promise of easy money, few hours of work at home and further contact by the consumer for more information. I realize that some of you have already stopped accepting these ads, but to those of you who haven't, I am asking your help in ridding Wisconsin of this type of promotion.

If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

Stephen J. Nicks
Assistant Attorney General,
In Charge Of Consumer Protection

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Mr. NICKS. Those are all the comments I have. I would be glad to answer questions.

Chairman HEINZ. Thank you very much.

[The prepared statement of Mr. Nicks follows:]

STATEMENT OF STEPHEN J. NICKS

My name is Stephen J. Nicks and I am the director of the office of consumer protection at the Wisconsin Department of Justice. I appreciate the opportunity to come before this committee to share a State's experience in consumer protection problems of the elderly.

Although we are primarily an enforcement agency, we also take consumer education and individual complaint mediation seriously. If consumers don't know what their rights are, they won't complain; if they don't complain, we miss out on information needed to prosecute.

On paper, there is a nice symmetry in consumer fraud enforcement. In Wisconsin, the statutes envision local district attorneys handling "local" problems. The department of justice, with its 7 prosecutors, 7 investigators, paralegals, and related support staff, handles "statewide" problems. And at the Federal level, the Federal Trade Commission and Postal authorities step in on interstate matters or matters of national concern. In practice, however, this symmetry vanishes. Local district attorneys are understaffed and underpaid and deal almost exclusively with traditional criminal matters. The Federal Trade Commission in the last 2 years has largely absented itself from the litigation area. What results is the overload of State enforcement agencies such as ours.

To compound this situation, we in Wisconsin have had to do more with less. In 1982, we received approximately 16,000 written complaints, up 9 percent from 1981. In the last biennium, the department of justice has had its budget reduced by a real 12 percent. As the percentage of the elderly population increases, the negative impact of our diminishing resources will be painfully evident. Given these harsh realities, it's a good thing that your committee is taking a serious look at the problems and possible solutions.

The study unveiled today squarely hits the problems we see in our enforcement efforts. For the sake of brevity, I will list a few examples:

(1) My office recently concluded a lawsuit against a company which sold mechanical beds costing $1,300 to the elderly and infirmed persons, by misrepresenting the delivery date, the credit terms, and the characteristics of these therapeutic beds. Large deposits were taken and some beds were never delivered. One of the victims was an 83-year-old woman, confined to a walker, who bought the bed to help her sleep. The bed provided so little comfort that she had to get up in the middle of the night and sleep in a chair. The company was enjoined from illegal practices, had to make over $8,000 in restitution to 17 elderly victims, and was fined $5,000.

(2) Complaints have been received from elderly homeowners who were approached by itinerent repair crews. Usually these complaints have the common elements of unsolicited contact at the home, low estimates for driveway or home repairs, unmarked pickup trucks, and demands for cash payment.

One elderly woman agreed to let three men seal her driveway after they gave her a $12 estimate. Upon completion, they told her they guessed wrong and the job would cost $700. When confronted alone by these three men she was frightened not to pay. They would not take a check but took a lesser amount of cash she had in the house.

(3) In another case, a Madison, Wis., hearing aid salesman was convicted of defrauding elderly persons in 7 Wisconsin counties. Visiting elderly in their homes, this defendant usually pretended to fix their hearing aids and collected hundreds of dollars in payment from each. He also convinced some people he could implant a new "miracle" device into their present hearing aids that would restore natural hearing. One victim was 91 years old and another blind. On at least 1 occasion he drove an elderly woman to the bank so she could withdraw cash to pay him. In other cases, he took hearing aids away for repair and never returned them.

A criminal conviction was secured and this defendant was sentenced to make restitution in excess of $12,000 and serve 4 years in prison. Unfortunately, no restitution was ever paid and several of his victims died before the case was concluded.

(4) Last year we saw the collapse of a large life care facility for elderly in suburban Milwaukee, Wis. At present Wisconsin has no law or regulation insuring the financial integrity of such operations. Over 100 elderly persons paid between $20,000 and $50,000 each to secure a place in this new facility which guaranteed "security

for the rest of your life." The promoters became overextended by using this money to attempt to build other facilities and the original venture failed, throwing the facility into foreclosure. Only then did the residents, many of whom used their entire life savings, realize that all the lifetime security promises were subordinated to the rights of the first mortgagee in foreclosure.

As with everyone else who has testified I could go on all day with examples and horror stories relating to the remaining categories. But since my time is up, I simply thank you for allowing me to speak today. I am more than willing to entertain questions.

Chairman HEINZ. I do have to observe that the one white light up on the clock means there is a vote on, so we are going to try and move along so that, among other things, the chairman can vote.

Mr. Getsay.

STATEMENT OF TERRY GETSAY, SPRINGFIELD, ILL., CRIMINAL INTELLIGENCE ANALYST, ILLINOIS DEPARTMENT OF LAW ENFORCEMENT

Mr. GETSAY. Thank you, Senator.

My name is Terry Getsay. I am a criminal intelligence analyst with the Illinois Division of Criminal Investigation. I am a former police officer from Pennsylvania, and recently moved out to Illinois a few years ago.

Chairman HEINZ. We doubly welcome you.

Mr. GETSAY. Thank you.

I would like to make you aware of the project that I run in Illinois. It is called the gypsy activities project. It involves a dissemination of what we entitle "Criminal Intelligence Bulletins." These documents contain photographs, vehicle license numbers and histories, and about 84 pages of narrative information regarding gypsies' history, culture, scams, investigative recommendations, and organization. We mail out about 2,200 copies to law enforcement agencies throughout the United States, Canada, through Interpol to Europe.

To date, 135 law enforcement agencies throughout the United States and Canada have informed me that they have used these documents to identify gypsies who have stolen over $2.1 million; 97 to 98 percent of the victims are the Willises, if you will. The example presented from Pennsylvania with Mrs. Willis is described in detail in here, as well as well-documented throughout the United States. That is what represents the $2.1 million. However, some of the more significant cases would include a $250,000 home invasion which was committed by gypsies in Florida; an $83,000 store diversion in Tennessee; a $200,000 fortunetelling scam in Massachusetts.

Home repair scams, such as the Willises, for the most part—and it may be hard to believe, but they were very lucky. I can cite many cases in the $40,000, $60,000, and $100,000 bracket. To make restitution, indeed, she was very lucky again.

Part of what we do, the project is a clearinghouse-type operation. Law enforcement agencies submit information to us. I then rework it, print it into these bulletins, and they are then redisseminated. The State of Illinois absorbs all the costs.

Another part of the project is that I frequently teach and conduct 1 and 2 day training seminars. Most recently, I conducted one

at the FBI Academy in Virginia, and a half-day one here at the Metropolitan Police Department in the District of Columbia.

Out of the 34 lectures, I have been in about 11 States, and have trained over 1,800 Federal, State, county, and local law enforcement people, as well as private security individuals. The office that I work from, on the average, I would receive and send about 20 forms of communication, letters, phone calls, et cetera, a day, requesting information, assistance, or direction in some fashion regarding the Willis case, if you will, that type of operation.

Thank you.

Chairman HEINZ. Thank you very much, Mr. Getsay.

You have testified to something that seems almost extraordinary. It is almost like a plot out of a grade B movie, but I gather you mean it when you say you believe there is a gang of gypsies that is out there, that they are organized, and that they are indeed nationwide in their activities.

Mr. GETSAY. That is correct.

Chairman HEINZ. How many people are we talking about, and where do they operate?

Mr. GETSAY. Basically, the best estimates we can come up with are approximately 1 million gypsies in the United States and Canada. We are in no way, myself as an individual or the Illinois Division of Criminal Investigation, inferring that all gypsies are involved in criminal activities. The $2.1 million was stolen by about 400 people. That $2.1 million also represents 135 agencies out of the 2,200 who received these that got back to me. I personally believe the actual figure would be close to $3 to $5 million in the last 3 years. The total cases would be 300 or 400.

Chairman HEINZ. So you think there are about 400 gypsies operating. Do you have any reason to believe that their operations are linked, that they are aware of what others are doing in that area of the country, as opposed to the next?

Mr. GETSAY. Yes. To establish this documentation, I spent 3 years reading over police reports and also public sector documents. My master's thesis, which I am currently writing, is on gypsies and their criminal propensity, and I am frequently called upon to, in the course of giving my lectures, describe the organization. Now, when I say 300 to 400 gypsies out of here, that is the ones that we know of, where departments took photographs and then forwarded them to me.

They are indeed well organized. They are indeed cooperative. I can cite many cases where items have been stolen in Florida, and they show up in New York, California, Chicago. These people travel 40 to 70 percent of the time. The average gypsy male, who blacktops that driveway of the Willises for $320 is estimated to earn over $100,000 per year, and wears out two brand-new pickup trucks.

Chairman HEINZ. Do they, as far as you can tell, pick on a particular segment of the population? Do they pick on the eldery, for example?

Mr. GETSAY. Yes, sir. The elderly are your most likely victims, as has been testified to, and as you could see plainly with Mrs. Willis, the problems encountered by a law enforcement agency attempting to use Mrs. Willis in a criminal court case that might take several

days, and her ability to review photographs and pick out an individual and say, "Yes, that is the person."

Unfortunately, they are the most likely victims. Unfortunately, they do not believe in banks, possibly because of surviving the Depression era. They do normally have relatively large amounts of cash.

What we have to understand when we are talking about the gypsy criminal is that the overhead expense is minimal. He buys some kerosene and puts a little bit of oil with it, sprays a driveway, and gets $4,000 or $5,000.

Chairman HEINZ. Let me interrupt because time, unfortunately, is getting very short on this vote.

I want to ask Ms. Villano, are there any things that you think the Federal Government should be doing, either the Congress or through the executive branch agencies?

Ms. VILLANO. We hear the importance of the local agencies picking up. I guess it seems like we are ganging up on the FTC. One good thing they tried to do was to enhance the networks of these local agencies in order to stay in communication. We do not have Telex lines, we do not have computers that talk to each other. Almost everything is done manually. We do have an association that I represent, and we did have a newsletter, and the FTC did fund it. All of a sudden, that has disappeared. I am sure trying to talk them back into helping us keep up our networking so we can be cooperative with them, which we have been, and also get their news and do a more cooperative—each little agency acting as an island is playing right into the hands of those swindlers, con men and con women, who would take advantage of all citizens, but particularly the elderly.

Chairman HEINZ. So some kind of an information-sharing network that you could have access to.

Ms. VILLANO. Indeed.

Chairman HEINZ. Anything else?

Ms. VILLANO. I think that would help at this point, because I know that your pot is about as lean as many of ours.

Chairman HEINZ. Yes, this happens.

Mr. Nicks, you have given some very specific suggestions, regarding speed of enforcement and regarding the amount of FTC resources being devoted to these problems. You have asked some questions about S. 450, and I can tell you it does indeed address the problem you mentioned. So, unless you have anything else to suggest to us, I would ask Mr. Getsay the same question I asked Ms. Villano.

Mr. NICKS. No, I do not, thank you.

Chairman HEINZ. All right.

Mr. Getsay, do you have any advice for the Congress or for the Federal Government generally, as to what we should do to combat these kinds of frauds against the elderly?

Mr. GETSAY. I would say from a law enforcement standpoint that the response to this type of project—that is, the feeding in of information to me, and then people requiring that Federal authorities as well as local all respond to this type of project—works very well. There is an excellent sharing mechanism. The vehicle for express-

ing the information needed is excellent, and the response is quite phenomenal.

Chairman HEINZ. I am going to have to adjourn the hearing. You have all come quite a ways to be here. Let me thank all of you—Mr. Nicks, Ms. Villano, Mr. Getsay—thank you for your testimony, and let me thank you above all for what you do day in and day out in your various roles. We are lucky to have public servants such as you who are so dedicated, and we thank you.

I know that the members of the committee and, more importantly, all the elderly, and all the other consumers in this country, owe you and people like you a great debt of gratitude.

Thank you.

[Whereupon, at 12:01 p.m., the committee adjourned.]

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